

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 NORMAN RHOADES
11 April 19, 2018, and April 20, 2018
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1	I N D E X	
2	EXAMINATION OF NORMAN RHOADES	
3	By Mr. Castellano	3
4	By Mr. Sindel	70
5	By Mr. Castle	129
6	By Mr. Shattuck	160
7	By Mr. Burke	163
8	By Mr. Castellano	166
9	By Mr. Burke	181
10	By Mr. Sindel	183
11	By Mr. Castle	188
12	REPORTER'S CERTIFICATE	194
13	EXHIBITS ADMITTED	
14	Government 115 Admitted	41
15	Government 116 Admitted	44
16	Government 117 Admitted	43
17	Government 119 Admitted	47
18	Government 120 Admitted	49
19	Government 121 Admitted	50
20	Government 128, 129, 131-139, 141-146,	20
21	170 and 171 Admitted	
22	Government 152 Admitted	119
23		
24		
25		

1 THE COURT: All right. Is Mr. Rhoades
2 here?

3 MR. BECK: Yes, Your Honor.

4 THE COURT: All right. Mr. Rhoades, if
5 you'll come up and stand next to the witness box on
6 my right, your left, before you're seated, my
7 courtroom deputy Ms. Bevel will swear you in.

8 NORMAN RHOADES,
9 after having been first duly sworn under oath,
10 was questioned, and testified as follows:

11 THE CLERK: Please be seated and please
12 state your name for the record.

13 THE WITNESS: My name is Norman Rhoades.

14 THE COURT: Mr. Rhoades, Mr. Castellano.

15 MR. CASTELLANO: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. CASTELLANO:

18 Q. Good morning.

19 A. Good morning.

20 Q. Would you please tell the members of the
21 jury what you do for a living?

22 A. I'm currently employed with the New Mexico
23 State Police, and I'm assigned to our crime scene
24 unit.

25 Q. What does it mean to be a member of the

1 crime scene unit?

2 A. It's a full-time position within the State
3 Police department. So our duties entail responding
4 to mostly violent crimes and processing the
5 collection of evidence, identification, and
6 extending often into reconstruction.

7 Q. How long have you been employed with the
8 State Police?

9 A. I passed 37 years in December, so 37 and
10 some months.

11 Q. Can you tell us a little bit about your
12 training and experience?

13 A. When I came on with State Police in 1980,
14 I was assigned to patrol, where I remained until
15 1999. And at that point then I went into criminal
16 investigations, until around 2005, when I got onto
17 and was assigned to the criminal scene unit.

18 Q. Before you were a member of the crime
19 scene unit, did you have basic instruction and
20 training on handling crime scenes?

21 A. Yes, I did.

22 Q. And then, once you became a member of the
23 crime scene unit, did you then basically make that
24 as a specialty?

25 A. Yes. Being a part of the crime scene

1 unit, then that entails our assignments.

2 Q. Were you working on March 26 of 2001?

3 A. Yes, I was.

4 Q. And what were your responsibilities back
5 in 2001?

6 A. In 2001 I was assigned to our criminal
7 investigation section.

8 Q. What were your responsibilities in that
9 section?

10 A. We had -- I was assigned criminal
11 investigations, and primarily limited to felony
12 investigations. There were some misdemeanors, but
13 primarily felony, and also in those days we
14 processed crime scenes more, I guess, on a part-time
15 basis, I guess, for lack of a better term.

16 Q. On that occasion were you notified -- you
17 and/or your coworkers notified of a homicide or two
18 at the Southern New Mexico Correctional Facility?

19 A. Yes.

20 Q. And as a result, what were you initially
21 supposed to do in relation to receiving that
22 information?

23 A. Well, initially we had received a call of
24 a deceased inmate at Southern New Mexico
25 Correctional Facility. And so I was assigned to

1 assist the case agent for that investigation. And
2 then just a very short time later I received a call
3 that there was a second inmate found deceased. So
4 at that point I was assigned to be the case agent or
5 the lead investigator for that second inmate.

6 Q. Who was the person you were supposed to
7 initially back up?

8 A. Agent Felipe Gonzalez.

9 Q. Was he supposed to be the original case
10 agent when there was only one homicide?

11 A. Yes.

12 Q. When the second one came in, you were
13 assigned your own case?

14 A. Yes.

15 Q. When you received the first call out, did
16 you begin responding to the penitentiary, or were
17 you still gathering everything to go out there?

18 A. I was at our office, so I was getting my
19 stuff to go.

20 Q. And then did you receive word of the
21 second homicide before you left the office?

22 A. Yes, I did.

23 Q. Where did you go in response to this call?

24 A. When I left our office, I drove to the
25 correctional facilities.

1 Q. Can you tell the members of the jury where
2 those facilities are?

3 A. It's going to be located off I-10, west of
4 Las Cruces.

5 Q. Here in New Mexico?

6 A. Yes.

7 Q. I want to show you what's been admitted as
8 Government's Exhibit 860. Do you recognize these
9 facilities?

10 A. Yes, I do.

11 Q. What happened when you first responded to
12 the penitentiary?

13 A. After I arrived there?

14 Q. Yes.

15 A. I went into an office and met with several
16 of our investigators and several members of the
17 correctional staff.

18 THE COURT: Mr. Castellano, before we get
19 into this, would this be a good time for us to take
20 our break?

21 MR. CASTELLANO: Sure, Your Honor.

22 THE COURT: Let me ask the jury, would you
23 like to take a 15-minute break and work through the
24 lunch hour and have a late lunch? How many of you
25 would prefer that? You know the options.

1 Okay. Looks like -- well, they're going
2 up there.

3 Does that work for the lawyers? Does that
4 work for the parties? So why don't we take about a
5 15-minute break, and we'll come back in and work
6 through the lunch hour, and get out of here about
7 1:15. All rise.

8 (The jury left the courtroom.)

9 THE COURT: Mr. Beck, take a look at 18
10 USC Section 3432. It says, "A person charged with
11 capital offenses is entitled to a witness list three
12 entire days" -- that's the quote -- "before trial,
13 excluding weekends and holidays."

14 Now, what I don't see is any statutory
15 definition of capital offense. But then, when you
16 look at Black's Law Dictionary -- which Brian Garner
17 is the editor-in-chief now -- he says that defines
18 capital offense as a crime for which the death
19 penalty may be imposed.

20 MR. BECK: I think that statute operates
21 with learned counsel, and once the penalty was
22 declined in this case once, it was declined by the
23 United States, it's no longer a capital case.

24 MR. SINDEL: I disagree with that, Your
25 Honor.

1 THE COURT: Y'all look at it.

2 MR. SINDEL: It's a capital offense.

3 THE COURT: Because right now, if the
4 defendants' interpretation is correct and we have a
5 violation by adding Jaramillo at this point, if
6 you're correct, then there is no violation. But I
7 do think we have an issue there.

8 All right. See you in about 15 minutes.

9 (The Court stood in recess.)

10 THE COURT: All right. I think we have
11 everybody. Do you want to go ahead and line them
12 up? I think we've got each defendant and an
13 attorney for each defendant.

14 Take a look at some statutes and rules.
15 My concern about not classifying this as a capital
16 offense -- I'm not saying I'm prepared to do that --
17 is then it seems to me there is going to be an
18 interplay with the statute of limitations here. So
19 you're going to have to take the position, if I'm
20 wrong, that these are capital offenses, to try these
21 cases.

22 So I gave you 3432, the witness list.
23 Then, if you look at 18 USC 3282(a), it talks about
24 any offense, not capital, and then 18 USC 3281,
25 quote, "any offense punishable by death." So when

1 you go to 3282(a), it says, "No person shall be
2 prosecuted, tried, or punished for any offense, not
3 capital, unless the indictment is found or the
4 information is instituted within five years next
5 after such offense shall have been committed."

6 And then 3281 says, "An indictment for any
7 offense punishable by death may be found at any time
8 without limitation."

9 And then 3005, the learned counsel, is
10 that "whoever is indicted for treason or other
11 capital crimes shall be" -- blah, blah, blah -- and
12 then "one counsel, at least one, shall be learned in
13 the law applicable to capital cases."

14 And then capital case, "each side has 20
15 peremptory challenges when the Government seeks the
16 death penalty." So that's about all I got as far as
17 what's a capital case in the statute or rules. But
18 take a look at those, because it seems to me that
19 you're going to run into yourself on the statute of
20 limitations, if they say it's a capital case.

21 MR. BECK: Your Honor, I'll look at those
22 statutes. I mean, there is no dispute the
23 Government provided a witness list. And the
24 Government listed Michael Jaramillo during voir
25 dire. They're saying that he wasn't listed as a

1 witness.

2 THE COURT: But that's not what this says.
3 It says, "three entire days before trial starts."
4 So anyway, just think about it. I'm not making any
5 rulings. All rise.

6 (The jury entered the courtroom.)

7 THE COURT: All right. Everyone be
8 seated.

9 All right. Mr. Rhoades, I'll remind you
10 that you're still under oath.

11 Mr. Castellano, if you wish to continue
12 your direct examination of Mr. Rhoades, you may do
13 so at this time.

14 MR. CASTELLANO: Yes, sir. Thank you.

15 THE COURT: Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. And before we go any further, what is your
18 title or rank?

19 A. Agent.

20 Q. Agent Rhoades, before the break, we were
21 looking at Exhibit 860. Let's see if we can bring
22 that back up on the screen. Do you recognize this
23 exhibit as the facilities at the Southern New Mexico
24 Correctional Facility?

25 A. Yes, I do.

1 Q. And then when you first got there, you
2 said you did something. What was it that you did
3 when you first arrived?

4 A. I was inside of an office and I met with
5 correctional personnel and other State Police
6 investigators who had responded.

7 Q. What's the purpose of doing that?

8 A. To get a briefing of what occurred, what
9 they knew, and the information that we would need
10 for investigation for follow-up.

11 Q. I'm circling on Exhibit 860 a portion that
12 has Paul 1 and in parentheses 5A. Next to it. Is
13 that the facility or the building on the property
14 that you eventually responded to?

15 A. Yes, it looks like it is.

16 Q. I'm going to show you what's been admitted
17 as Exhibit 123. Is that the front of the building
18 of Paul 1, or P-1 unit?

19 A. Yes, it is.

20 Q. Now, when you arrived at the facility,
21 approximately what time was it?

22 A. I got there about 10:00 a.m.

23 Q. And the photograph -- it looks like it's
24 dark or nighttime; is that correct?

25 A. Yes.

1 Q. So is it fair to say that this was taken
2 much later that day?

3 A. Yes, it is.

4 Q. So once you had this kind of briefing with
5 corrections officials and other officers, what was
6 the plan you put together?

7 A. At that point we kind of separated out
8 between the two investigations, and each one kind of
9 funneled off into its own direction, knowing there
10 would be some overlap with various primary
11 correction personnel.

12 So on my investigation, then, I obtained
13 information from correctional personnel relating to
14 who was assigned to P-1 blue, and any logs that
15 correctional officers kept were provided as far as
16 the times of who went in, who went out, things like
17 that.

18 Q. What was the purpose of doing that?

19 A. Just to get kind of get a feel for who
20 would be inside that pod during the time of the
21 murder; and if anybody was in there that shouldn't
22 be, would be on the log, things like that. Just to
23 kind of get an idea what was going on around that
24 time.

25 Q. I know it's been a long time now, but if

1 you remember, do you recall whether or not inmates
2 were in their cells when you arrived to that pod?

3 A. And that I don't remember.

4 Q. I'm going to show you Government's Exhibit
5 124, which has been admitted. Now, a second ago you
6 said it was P-1 blue pod. Looking at this, do you
7 think it a different pod from the colors?

8 A. It could be green. It's been a while.

9 Q. In that exhibit, on the second floor there
10 is a door that has some red tape on it. I'm
11 circling the door for you. Is that the door you
12 responded to?

13 A. Yes, it is.

14 Q. And it looks like there's some strips of
15 tape from -- I'm also highlighting those across,
16 between the door and the wall?

17 A. Yes.

18 Q. And when you got there, were those already
19 in place?

20 A. Yes, they were.

21 Q. From your experience as an investigator,
22 what's the purpose of putting something like that
23 across a door?

24 A. That's evidence tape, adhesive evidence
25 tape, so it's going to seal the door. And there

1 should be a date and initials of who applied it, who
2 put it there. And then if it's broken, we'll know
3 that that door has been breached, and maybe the
4 crime scene.

5 Q. Is that the door as you found it when you
6 arrived at the facility?

7 A. Yes, it is.

8 Q. I'll show you Government's Exhibit 125,
9 and it looks like a stairwell to a second floor with
10 tape across it?

11 A. Yes.

12 Q. Is that also the scene as you found it
13 when you arrived?

14 A. Yes, it is.

15 Q. I'm going to ask you about some of the
16 things you saw when you first entered the door or
17 opened the door in Government's Exhibit 127. Do you
18 recall if that's the scene as you found it?

19 A. Yes, it looks pretty close to it. I did
20 not open the door when I got there that morning. I
21 just looked through the window, is all.

22 Q. Then when you got there, at that point you
23 weren't part of the crime scene team. Did you have
24 to call in the team?

25 A. Yes.

1 Q. Where was that team coming from?

2 A. They responded -- there was two
3 investigators that responded out of Albuquerque.

4 MR. SINDEL: I'm sorry, I couldn't quite
5 hear that.

6 A. There were two investigators for the crime
7 scene that responded out of Albuquerque.

8 MR. SINDEL: Thank you.

9 BY MR. CASTELLANO:

10 Q. And do you remember at what point those
11 people arrived?

12 A. Not precisely. It was later toward the
13 evening, I think, late afternoon.

14 Q. For those that don't know, the drive time
15 or distance -- are Albuquerque and the correctional
16 facility about three to three and a half hours
17 apart, driving time?

18 A. Yes.

19 Q. So you said you first saw this person that
20 you looked through the window to the cell?

21 A. Yes, that's correct.

22 Q. So do you remember approximately how long
23 it was before that cell was opened to process the
24 scene?

25 A. It could have been eight or nine hours

1 later.

2 Q. So did you wait for the team to arrive
3 before the door was opened?

4 A. Yes. I didn't open the door. They did,
5 the crime scene team did.

6 Q. At that point, is this a picture looking
7 through the doorway into the cell?

8 A. It appears to be taken from inside the
9 cell.

10 Q. And was the person in the cell identified
11 as Frank Castillo?

12 A. Yes.

13 Q. So if you were there for that period of
14 time before the cell was open and it was processed,
15 what were you doing in the meantime?

16 A. In the meantime, I was conducting
17 interviews.

18 Q. And who were you interviewing?

19 A. I'd interviewed some of the first
20 responding personnel and some correctional
21 personnel, and then the inmates assigned to that
22 pod.

23 Q. And I'm not going to ask you names. In
24 terms of interviewing inmates, did some inmates give
25 you statements and others not?

1 A. That's correct.

2 MR. CASTELLANO: May I have a moment, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. CASTELLANO:

6 Q. Agent Rhoades, I'm showing these
7 photographs to defense counsel, then I'll show them
8 to you.

9 MR. CASTELLANO: Thank you, Your Honor.
10 At this time I'm going to move the admission of
11 Government's Exhibits 128, 129, 131 through 139,
12 Exhibits 141 through 146, and Exhibits 170 and 171.

13 THE COURT: All right. Any objection from
14 the defendants?

15 MR. SINDEL: Your Honor, I don't have any
16 particular objection other than the fact that since
17 this individual, Mr. Rhoades, didn't take those
18 photographs, I would hope that the Government would
19 be able to supplement with a time when the actual
20 photographs would have been taken. Otherwise, I
21 have no other objection.

22 THE COURT: All right. Are you going to
23 be able to do that, Mr. Castellano?

24 MR. CASTELLANO: I don't know, Your Honor.
25 The only foundation that requires is a fair and

1 accurate depiction of the photographs taken that
2 day. And we may have another witness -- I'm told we
3 do have another witness that could give the
4 timeframe.

5 THE COURT: Does that work?

6 MR. SINDEL: If there's no other witness,
7 it's hard to determine really if it's a fair and
8 accurate depiction of what this individual saw, or
9 what some other person who has taken the photograph
10 I think he said eight or nine hours later. We just
11 don't know. So I have a foundational --

12 THE COURT: Why don't you do this?
13 Without showing them to the jury, why don't you show
14 them to him and lay the foundation, then we'll go
15 from there.

16 MR. CASTELLANO: Sure. The additional
17 exhibit will be Exhibit 122, if I haven't added that
18 to the list.

19 THE COURT: All right.

20 MR. CASTELLANO: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 BY MR. CASTELLANO:

24 Q. Agent Rhoades, I've handed you that stack
25 of exhibits. I'll have you look at those quietly to

1 yourself, and ask if they are a fair and accurate
2 depiction of what you saw on or about March 26,
3 2001, and maybe into the hours of March 27. Have
4 you had an opportunity to look at those exhibits?

5 A. Yes, I did.

6 Q. And are each of them a fair and accurate
7 depiction of what you saw on March 26, 2001?

8 A. I think everything except for Government's
9 Exhibit 122, which is an identification sheet that
10 is used -- should be the first photograph before
11 taking photos of the crime scene. This -- I --
12 that's going to be something the photographer wrote
13 out, so...

14 MR. CASTELLANO: Your Honor, with the
15 exception of Government's Exhibit 122, I move the
16 admission of each of those exhibits.

17 THE COURT: Anything further on that, Mr.
18 Sindel?

19 MR. SINDEL: No additional objections,
20 Your Honor.

21 THE COURT: All right. So I'm going to
22 admit Government's Exhibits 128, 129, 131, 132, 133,
23 134, 135, 136, 137, 138, 139, 141, 142, 143, 144,
24 145, 146, 170 and 171. 122 will not be admitted.

25 (Government Exhibits 128, 129, 131-139,

1 141-146, 170 and 171 admitted.)

2 MR. CASTELLANO: May I retrieve the
3 exhibits?

4 THE COURT: You may.

5 BY MR. CASTELLANO:

6 Q. Exhibit 122 has not been admitted, but are
7 you familiar with exhibits like that?

8 A. Yes, I am.

9 Q. And have you made exhibits like that
10 yourself?

11 A. Yes, I have.

12 Q. What's the purpose of making something
13 like that?

14 A. It ties a particular set of photographs
15 into a specific investigation, outlines the case
16 number, location, time, date, things of that nature,
17 who the photographer is.

18 Q. And without telling us the contents of
19 that exhibit, is that what that exhibit is or
20 contains?

21 A. Yes.

22 MR. SINDEL: Your Honor, there is an
23 indication on 122 of the time. That may alleviate
24 some of my concerns. I just didn't notice any time
25 on that exhibit.

1 MR. CASTELLANO: There is no time on the
2 exhibit, Your Honor; just the date.

3 BY MR. CASTELLANO:

4 Q. Okay, Agent Rhoades, once you got into
5 that cell, did you help either process the scene or
6 oversee those who were processing the scene?

7 A. I did not assist with it. I just oversaw
8 or observed.

9 Q. When you oversee, are you pointing out
10 things that may be relevant and asking the people to
11 take photographs of those items?

12 A. Yes, that's correct.

13 Q. So as the case agent, are you responsible
14 for overseeing this process?

15 A. Not in every investigation, but when I'm
16 on the scene, I'm the case agent. Yes, I am.

17 Q. Let me begin with Government's Exhibit
18 128. First of all, can you tell us what this is, if
19 you know, and where you found it?

20 A. It's going to be a handwritten note that
21 had been torn, and it was collected from the trash
22 can.

23 Q. And did the note have any significance to
24 you at the time, or did you just collect it in case
25 it became important later on?

1 A. At the time, it didn't have any
2 significance.

3 Q. Let me turn your attention to Exhibit 129.
4 Is this the same note we saw in the previous
5 exhibit?

6 A. Yes, it is.

7 Q. Now there appears to be a letter A above
8 that note.

9 A. Yes.

10 Q. Can you tell the members of the jury what
11 the purpose is -- first of all, who put that there?

12 A. I don't know.

13 Q. Do you know what the purpose is of having
14 something like that in a crime scene?

15 A. Yes, I do.

16 Q. What's the purpose?

17 A. Whenever we collect evidence, we're going
18 to place down an evidence number or letter to
19 identify that piece of evidence, and it will be
20 tracked from the crime scene into our vault, to the
21 lab, and back.

22 Q. In other words, if you have an item A in
23 your police report, you know what item A refers to?

24 A. That's correct.

25 Q. Let me show you Government's Exhibit 141.

1 And do you know what we're looking at in that
2 exhibit?

3 A. That appears to be like tobacco, cigarette
4 tobacco, maybe.

5 Q. And is there anything in there for the
6 purpose of making cigarettes or rolling cigarettes?

7 A. Looks like maybe cigarette paper in that
8 package next to it.

9 Q. Let me show you next Government's Exhibit
10 143. Do you know what we're looking at in that
11 exhibit?

12 A. Yes, I do.

13 Q. What is that?

14 A. That's going to be -- and this is taken
15 from inside the pod up on the second level, the
16 balcony, walkway. And it's going to be the area of
17 the control center on the top, and the entrance into
18 the pod on the bottom.

19 Q. I'm circling a door on the left-hand side
20 of that exhibit. Is that the door that is the
21 entrance-and-exit door to the pod?

22 A. I believe it is, yes.

23 Q. I'm now circling kind of a glass-looking
24 area. What have I circled there?

25 A. That's going to be where the control

1 officer is housed.

2 Q. Are you aware of whether or not
3 corrections officers refer to that as the bubble?

4 A. They could. I don't recall offhand.

5 Q. And did you have a chance to go up into
6 that area of the pod to look around?

7 A. I don't remember going up into that area,
8 no.

9 Q. Have you been into one of those areas
10 before?

11 A. Maybe once on another investigation. I
12 don't remember specifically.

13 Q. So ultimately, the question will be: Do
14 you know what you can see inside that bubble? If
15 you don't know, it's okay.

16 A. I don't know firsthand, no.

17 Q. Let me turn your attention next to Exhibit
18 144. Is that just a closer view of the note that
19 was found in the cell?

20 A. Yes, it is.

21 Q. When I say "the cell," was that in Frank
22 Castillo's cell?

23 A. Yes.

24 Q. Exhibit 142. What are we looking at in
25 that exhibit?

1 A. This is a close-up of the head and
2 shoulders of Frank Castillo, laying face-down on his
3 bunk.

4 Q. Since he's laying face-down as he was in
5 other photographs, does this lead you to believe
6 that this is a picture of the body before the
7 investigators moved it in any way?

8 A. Yes.

9 Q. And when you entered the pod, was it your
10 understanding that medical staff had at least moved
11 the body to take vitals or check on Mr. Castillo?

12 A. Yes.

13 Q. After that time, when was the body next
14 moved?

15 A. The next time, to my knowledge, it was
16 moved -- and that's based on the body being sealed
17 in the cell and the seals not broken -- would be
18 later that evening after OMI, the medical
19 investigators, arrived.

20 Q. Can you explain that to the members of the
21 jury about why you would or wouldn't move the body
22 before OMI arrives?

23 A. By our state law, the medical
24 investigator, Office of Medical Investigator, has
25 jurisdiction over the body. So we do not interact

1 with the body until they are present and authorize
2 us to do so.

3 Q. Do you remember approximately what time it
4 was that OMI arrived?

5 A. I think around 9:30, 10:00, somewhere in
6 there.

7 Q. A.m. or p.m.?

8 A. That would be p.m.

9 Q. So 9:00 or 10:00 in the evening?

10 A. Yes.

11 Q. So like you said, as best you know, did
12 this body remain in this position until that night?

13 A. That's correct.

14 Q. I'm now going to show you Exhibit 145.
15 What's different about the body in this picture?

16 A. At this point, the body had been rolled
17 onto the back and placed into a body bag on the
18 floor next to the cot or the bed.

19 Q. I'm going to put a line down the screen
20 here. On the left hand of the line, what is that?

21 A. On the left hand is the bed.

22 Q. Is that where Mr. Castillo was facing
23 downward?

24 A. Yes.

25 Q. And then he was rolled over for purposes

1 of putting him into a body bag?

2 A. Yes, and further examination.

3 Q. You'll probably be asked questions about
4 the discoloration on his body. I've circled his
5 torso where his hands are crossed. Have you seen
6 things like that before?

7 A. Yes, I have.

8 Q. In what circumstances have you seen the
9 discoloration of the body?

10 A. At some period after death, the blood
11 begins to settle by a gravitational process into the
12 other cells of the body and begins a staining
13 action, red stain. And over a period of time, it
14 becomes set within the tissue, so you can't push it
15 out. A lot of times you push your finger on the
16 stain, initially it will turn white; you'll push the
17 blood out of those capillaries. But in time it's
18 set there and it won't do that. And it's called
19 lividity, or rigor mortis is another term for it.

20 Q. I'm going to circle Mr. Castillo's legs
21 here where it looks like there's discoloration but
22 then lighter colors around where his knees are.
23 Does that come from pressure on the tissue and the
24 blood not settling?

25 A. That's correct.

1 Q. I'm also going to circle his hands. If he
2 had been lying on his hands, would that be
3 consistent, as well, with the blood not pooling or
4 collecting there?

5 A. Probably the parts of the hands that's in
6 direct contact with the surface.

7 Q. I'm showing you next Government's Exhibit
8 146. Is this once again Mr. Castillo?

9 A. Yes, it is.

10 Q. And what is that -- it looks like it's
11 around his face area, the cloth?

12 A. This is a combination of ligature, a mesh
13 bag I think they use for laundry. And there was,
14 like, a sweat cap intermingled with that.

15 Q. I'll ask you the same question about the
16 discoloration where you can see a marking, a line
17 around his arm. That looks like it's a lighter
18 color than where pooling had occurred.

19 A. Yes.

20 Q. In the bags over here, can you tell
21 whether or not this laundry bag and ligature had
22 been collected for evidence?

23 A. Yes, it was.

24 Q. Showing you next Government's Exhibit 131,
25 what are we looking at in that exhibit?

1 A. These are the knees of Frank Castillo, and
2 it's depicting scrapes and abrasions and injuries
3 like that.

4 Q. Let me show you also 132.

5 A. This is also a photograph of the knees of
6 Frank Castillo, also depicting scrapes and abrasions
7 and things.

8 Q. All right. Do you know necessarily when
9 those got there, or how they got there?

10 A. No, I don't.

11 Q. Can you tell whether or not they looked
12 fresher or older, for example, whether there was
13 scabbing or anything like that?

14 MR. SINDEL: I'll object unless there is
15 some training for him to make a determination.

16 THE COURT: Let's take out the word
17 "anything like that," because that's a little broad.
18 Scabbing, I think a layperson could probably do it.
19 BY MR. CASTELLANO:

20 Q. Could you determine whether or not the
21 wounds I'm circling, for example, were scabbing, or
22 were there any signs of scabbing?

23 A. I don't really recall.

24 Q. Turning next to Exhibit 134, is this where
25 you can see once again what you've described as a

1 ligature and then the laundry bag?

2 A. Yes.

3 Q. When you use the term "ligature," what do
4 you mean?

5 A. Like a ligature could be a string or a
6 small rope, or some type of shoelace, things like
7 that.

8 Q. And generally in what context do you use
9 the term "ligature"?

10 A. For me, I use it in terms of -- depending
11 on the investigation, a strangulation. Then if this
12 is around the neck, then we'll refer to it as a
13 ligature.

14 Q. Next is Exhibit 135. Can you tell what
15 we're looking at in that exhibit?

16 A. This is going to be a photo image of the
17 bed of Frank Castillo, and you can see the sheet, a
18 mesh blanket, and it also looks like there's what
19 appears to be blood on them.

20 Q. And can you tell whether or not that was
21 at the foot of the bed or the head of the bed we're
22 looking at there?

23 A. That's going to be the foot.

24 Q. And can you tell whether or not those
25 blood marks are similar to or line up with the blood

1 marks on his knees?

2 A. Yes, they do.

3 Q. Let me go back to Exhibit 132 real
4 quickly. I'm circling two marks on his knees. Can
5 you tell from the exhibit whether those appear, at
6 least from the pictures, to line up?

7 A. Yes, they do.

8 Q. Does that give you some idea about when
9 those marks might have been left on the bed?

10 A. It's possible. It would be a conclusion
11 on my part.

12 Q. Turning to Exhibit 136, what's depicted in
13 that photograph?

14 A. This is the photo of the back end of the
15 cell depicting the window, the commode, and a sink.

16 Q. Does that give us some idea of the
17 dimension or the size of the cell?

18 A. It does, yes.

19 Q. Exhibit 137?

20 A. This is going to be an image of the desk
21 inside of the cell, and it's showing what I believe
22 is tobacco that we looked at earlier.

23 Q. I'm circling something on -- I'll call it
24 the countertop. Is that what you referred to, what
25 we saw in an earlier picture?

1 A. Yes.

2 Q. I'm also circling at least a few boxes on
3 this exhibit that look like they are blacked-out or
4 redacted. Do you know what's behind those
5 redactions?

6 A. Yes, I do.

7 Q. What is it?

8 A. There was photo images of nude women.

9 Q. So those photographs of nude women have
10 been covered up in this exhibit?

11 A. Yes, they have.

12 Q. Turning to Exhibit 138, are we now looking
13 from the other side of the room towards the doorway?

14 A. Yes.

15 Q. And I'm going to ask you the same question
16 about blacked-out boxes on that exhibit. Were those
17 also photos of nude women?

18 A. Yes, they were.

19 Q. The next is Exhibit 139. Is this another
20 picture of Mr. Castillo?

21 A. Yes, it is.

22 Q. On the side of his body as he's laying
23 face-down here, I'm going to kind of circle some
24 more discoloration around his shoulders and the
25 right side of his body. Do you know whether that's

1 part of the blood pooling, or can you tell whether
2 that's scrapes or abrasions? Do you know anything
3 from looking at this photograph?

4 A. I remember sensing it's the lividity.

5 Q. Turning to Exhibit 171. Okay, what is
6 this exhibit here?

7 A. This is going to be a layout of P-1 unit.
8 So it's depicting the control center and the three
9 pods that's connected to it.

10 Q. I'm going to circle something in the
11 middle of this diagram. Have I circled what you've
12 identified as the control center?

13 A. Yes.

14 Q. And then I'm going to also draw some lines
15 here, moving from the center to the left at about
16 9:00 on -- this is a watch face, and 12:00 on a
17 watch. What lines have I drawn there and what do
18 they tell us about the pods?

19 A. Those lines are going to be representative
20 of the wall separating each of the pods.

21 Q. And so also on here it looks like there's
22 blue pod; I'm going to put a B there; yellow pod and
23 green pod. Have I accurately labeled those?

24 A. Yes, according to this diagram, they are.

25 Q. And is green pod where you found

1 Mr. Castillo?

2 A. Yes, it is.

3 Q. Let me move to the next exhibit, which is
4 Exhibit 170. Okay. What are we looking at in
5 Exhibit 170?

6 A. This is a diagram of the green pod.

7 Q. So is this basically one-third of the
8 housing unit, just showing one pod?

9 A. Yes, it is.

10 Q. Now, on the outer perimeter of this
11 diagram I'm circling in the upper right-hand corner
12 of that building two numbers: 2209 and, below it,
13 1109. Can you tell the members of the jury what
14 those numbers represent?

15 A. Those numbers are going to represent the
16 individual cell numbers. One will be from the lower
17 level, and one will be the one above it on the upper
18 level.

19 Q. And do you remember if the numbers
20 beginning 2, for example, 2209 -- if that's the
21 second floor; and 1109, the cell immediately below
22 it on the first floor?

23 A. Yes, I believe so.

24 Q. So for example, as a result of getting
25 these numbers and looking at corrections records,

1 could you tell who was housed in which of these
2 cells?

3 A. Yes.

4 Q. Is that what you did as part of your
5 investigation?

6 A. Yes.

7 Q. When you talked to the inmates and the
8 corrections officers, did you talk to the
9 corrections officers first or the inmates?

10 A. I think I talked to the correction
11 officers first.

12 Q. Why would you do things in that order?

13 A. To get more of a foundation of how things
14 were during that time. They could provide who was
15 aware and things of that nature.

16 Q. And would that give you more information
17 then when you questioned any inmate that you did?

18 A. Yes.

19 Q. Do you remember what time approximately
20 that you began the interviews of the other inmates?

21 A. I'd have to refer back to the reports. It
22 could have been in the early afternoon.

23 Q. Would it help to refresh your recollection
24 to look at your report?

25 A. Yes, it would.

1 MR. CASTELLANO: May I approach the
2 witness, Your Honor?

3 THE COURT: You may.

4 A. It's on the floor right there.

5 BY MR. CASTELLANO:

6 Q. I'm handing you a black three-ring binder.
7 Is this the binder containing reports from your
8 investigation?

9 A. Yes.

10 Q. If you'd refresh your recollection so
11 defense counsel knows, can you tell us, when you
12 find it, the date or something identifying about the
13 report so they know which one you're looking at?

14 A. Yes, I can. This report is going to be
15 labeled the original report. So as case agent, I'm
16 going to write the original, and everybody else
17 involved with this investigation that does a report,
18 theirs will become a numbered supplement report.
19 And that should be noted on their report, as well.

20 Q. What's the date on your report?

21 A. The date it was admitted was June 22, '01,
22 and approved June 25, '01.

23 Q. You're refreshing your recollection by
24 reviewing your report. I'll ask you what time you
25 started inmate interviews and what time you

1 finished.

2 A. The first inmate interview would be at
3 approximately 3:00 p.m.

4 Q. At what point did you finish those
5 interviews?

6 A. The last inmate interview is going to be
7 approximately 6:51 p.m.

8 Q. And also how many people did you
9 interview -- were the people interviewed people
10 within the pod?

11 A. Yes.

12 Q. Did you interview any inmates outside of
13 the pod?

14 A. No.

15 Q. So how many people did you approach for
16 purposes of interviews?

17 A. Inmate-wise?

18 Q. Yes. I just need a number, not names.

19 A. I'm thinking around -- I can count them
20 real quick. I want to say 12 or 13.

21 Q. If you wouldn't mind counting to make sure
22 we have an accurate number, please.

23 A. I'm counting 12.

24 Q. What did you do after the interviews?

25 A. After the last interview then I at some

1 point went over to the pod where the crime scene
2 unit was.

3 Q. So you said you went to the pod. Did
4 you -- at that point in time, did you interview the
5 inmates at a location outside of the pod?

6 A. Yes.

7 Q. Where was that?

8 A. It was inside of an office, and I don't
9 remember the location of that office.

10 Q. Were they each brought to you one at a
11 time?

12 A. Yes, they were.

13 Q. At some point did you meet with Officers
14 Duncan and LaCuesta?

15 A. Yes, I did.

16 Q. About what time was that?

17 A. It was in the evening. I want to say
18 around -- I don't know. 8:30, 9:00, maybe, and that
19 would be p.m.

20 Q. You said your report was dated June 22 of
21 2001. Were you doing other things between March of
22 2001 and June 2001, when you finalized your report?

23 A. Yes, I was.

24 Q. What types of things were you doing?

25 A. Well, on this case -- I had several cases

1 going during this time, but on this case I was doing
2 follow-up. I think I was getting some information,
3 meeting with the correctional staff, trying to
4 compile evidence, and see what needed to be sent out
5 to the lab, things like that.

6 Q. And then when you finished compiling all
7 this information, did you then put it all into one
8 report?

9 A. Well, I made this initial report, and then
10 I completed supplement reports down the line.

11 Q. Agent Rhoades, I'm going to show you some
12 physical exhibits as well as the photographs, but
13 I'm going to show the defendants first.

14 Agent Rhoades, I think these will be
15 admitted without objection, but what I'm going to do
16 is present them to you and have you look at them.
17 First, without showing it to the jury, look at each
18 one to yourself and tell us what exhibit number it
19 is.

20 A. Exhibit 115.

21 Q. What is Exhibit 115?

22 A. It's going to consist of the torn note and
23 the evidence bag that it was sealed in.

24 Q. Remind us where that was found.

25 A. In the trash can.

1 Q. Of whose cell?

2 A. Of Frank Castillo's.

3 MR. CASTELLANO: Your Honor, I move the
4 admission of Exhibit 115.

5 THE COURT: Any objection from the
6 defendants?

7 MR. SINDEL: No objection, Your Honor.

8 THE COURT: Not seeing or hearing any
9 objection, Government's Exhibit 115 will be admitted
10 into evidence.

11 (Government Exhibit 115 admitted.)

12 BY MR. CASTELLANO:

13 Q. If you can please grab the next exhibit
14 and tell us first what exhibit number it is.

15 A. Exhibit 117.

16 Q. What is that exhibit?

17 A. This is going to be one of the sheets
18 collected from the bed of Frank Castillo?

19 MR. SINDEL: May we have Mr. Castellano
20 ask this witness if he was the one that collected it
21 or whether it was an evidence technician; and if
22 there is any indication on the evidence stickers as
23 to the time those items were collected?

24 THE COURT: Do you have any problems
25 asking those questions?

1 MR. CASTELLANO: No, Your Honor.

2 BY MR. CASTELLANO:

3 Q. Mr. Rhoades, did you hear that question?

4 A. Part of it.

5 Q. Were you part of recovering this exhibit,
6 and are there any notations about dates or times of
7 collection?

8 A. I did not collect the evidence. There is
9 a label on that that shows who collected it, and the
10 date, but I don't see where they put the time on it.

11 Q. Are you familiar with the process of
12 collecting that type of information?

13 A. Yes, I am.

14 Q. And as far as you can tell from looking at
15 the exhibit, has it been altered or changed in any
16 material way from when you saw it?

17 A. Just that it was placed in this bag and
18 folded up differently.

19 Q. Also on March 26, 2001, by the collection
20 or evidence team?

21 A. Yes, and then later into this plastic bag.
22 The initial bag was this paper bag inside.

23 Q. Right. Can you explain that to the
24 members of the jury as to why there is a paper bag
25 inside the bag, and why it's in the bag that we have

1 now?

2 A. When we collect evidence, depending on
3 what type of evidence, most of it is collected and
4 placed into paper bags so it doesn't destroy any
5 latent prints or DNA evidence. Later, for the
6 purposes of court, then after the lab is completed
7 with the examination of it and analysis of it, then
8 it's placed into the plastic bag for presentation.

9 Q. In other words, is it in the plastic bag
10 now so we can see what's contained in the bag?

11 A. That's correct.

12 MR. CASTELLANO: Your Honor, I'd move the
13 admission of 117I.

14 THE COURT: Objection?

15 MR. SINDEL: No objection.

16 THE COURT: Not seeing or hearing
17 anything, Government's Exhibit 117 will be admitted
18 into evidence.

19 (Government Exhibit 117 admitted.)

20 BY MR. CASTELLANO:

21 Q. Please turn to the next exhibit and tell
22 us what the number is.

23 A. It's going to be Exhibit 116.

24 Q. And what is that exhibit?

25 A. This is going to be the other sheet

1 removed from Frank Castillo's bed.

2 Q. As far as you can tell from the package
3 and the markings, was it collected in the same
4 manner and on the same date?

5 A. Yes.

6 MR. CASTELLANO: I move the admission of
7 Exhibit 116.

8 THE COURT: Any objection?

9 MR. SINDEL: No objection, Your Honor.

10 THE COURT: Not seeing or hearing any,
11 Government's Exhibit 116 will be admitted into
12 evidence.

13 (Government Exhibit 116 admitted.)

14 BY MR. CASTELLANO:

15 Q. Agent Rhoades, please grab the next
16 exhibit.

17 A. Exhibit 118.

18 Q. What is that exhibit?

19 A. This is going to be the mesh blankets.
20 I'm thinking there may be two of them in here. This
21 was collected from the bed of Frank Castillo.

22 Q. As far as you can tell from the markings
23 and the packagings, was it collected in the same
24 manner and on the same date?

25 A. This package does not contain the paper

1 bag it initially came in. It may be in the box
2 here. This is just inside of the plastic bag.

3 Q. Is there an indication that that's what
4 the -- from looking at that, is there an indication
5 that that's what was found in Frank Castillo's cell
6 on that date?

7 A. An indication on this package is what
8 you're referring to? Nothing written, no.

9 Q. Okay. I'll wait on that one and see if we
10 have other packaging.

11 Can you grab the next exhibit, please?
12 This will be Exhibit 119. What is that exhibit?

13 A. This is going to consist of -- I think I
14 referred to it as a sweat cap and some ligatures
15 that was around the neck of Frank Castillo. It's
16 also going to contain a small envelope from the
17 Office of the Medical Investigator labeled "24 hairs
18 unsuitable," I believe it says.

19 Q. Can you tell from any markings associated
20 with that whether or not that was collected on or
21 about March 26 of 2001 from Frank Castillo?

22 A. Yes, and the label actually says March 27.

23 Q. Since it says March 27 on there, do you
24 remember what time you eventually finished the
25 processing of the crime scene team?

1 A. It could have been past midnight that this
2 label was made. I think they completed it earlier
3 than midnight. But there is a process after the
4 scene, so I relinquish where the evidence is
5 packaged, sealed, and relinquished over to me,
6 transferred over to me.

7 MR. CASTELLANO: At this time, I move the
8 admission of Exhibit 119.

9 THE COURT: Any objection?

10 MR. SINDEL: Your Honor, I think I'm going
11 to object to this. I can't see it. But I believe
12 it may be part of the ligature that was collected
13 during the course of the autopsy. And therefore, I
14 think there needs to be foundation as to
15 circumstances, if I'm correct, that the ligature was
16 actually collected.

17 THE COURT: Do you want to lay a further
18 foundation here?

19 MR. CASTELLANO: I could ask some
20 additional questions.

21 THE COURT: All right.

22 BY MR. CASTELLANO:

23 Q. Agent Rhoades, do you recall on March 27,
24 2001, submitting certain items or receiving them
25 from OMI?

1 A. Yes, I do.

2 Q. And can you tell the members of the jury
3 whether when Mr. Castillo was removed from the
4 scene, he was removed with the ligature around his
5 neck?

6 A. Yes.

7 Q. And on March 27 of 2001, did you receive
8 that back from OMI?

9 A. Yes.

10 Q. And was there paperwork including things
11 such as the chain of custody that indicated it was
12 sent from OMI and back into your custody?

13 A. Yes.

14 MR. CASTELLANO: Your Honor, at this time
15 I move the admission of 119.

16 THE COURT: Is that sufficient?

17 MR. SINDEL: It is, Your Honor.

18 THE COURT: All right. Anybody else have
19 objection? Not seeing or hearing any, Government's
20 Exhibit 119 will be admitted into evidence.

21 (Government Exhibit 119 admitted.)

22 BY MR. CASTELLANO:

23 Q. While I'm talking about things received
24 from OMI on March 27 of 2001, did that also include
25 Mr. Castillo's boxers, shorts, and his socks?

1 A. Yes, it does.

2 Q. And are those contained within that box
3 next to you?

4 A. Yes.

5 Q. As well as the fishnet laundry bag with
6 clothing inside?

7 A. Yes.

8 Q. And did you receive what's referred to as
9 a body standard?

10 A. Yes.

11 Q. What is that? What does that mean?

12 A. That's like a blood spot, fingernail
13 clippings. A lot of times things like that are
14 collected from OMI for the purposes of additional
15 analysis; DNA, primarily.

16 Q. Okay. Please turn to the next exhibit.

17 A. This will be Exhibit 120.

18 Q. What is it?

19 A. It's going to be the mesh laundry bag and,
20 looks like, a white towel.

21 Q. Is that the mesh bag I asked you about a
22 moment ago, about it going to OMI with the body and
23 being sent back to you?

24 A. Yes.

25 MR. CASTELLANO: At this time, I move the

1 admission of Exhibit 120.

2 THE COURT: Any objection?

3 MR. SINDEL: No objection.

4 THE COURT: Anyone else? Not seeing or
5 hearing any objection, Government's Exhibit 120 will
6 be admitted into evidence.

7 (Government Exhibit 120 admitted.)

8 BY MR. CASTELLANO:

9 Q. What's the next exhibit, Agent Rhoades?

10 A. This will be Exhibit 121.

11 Q. What's contained within that exhibit?

12 A. It's going to be a pair of white socks, a
13 pair of gray shorts, and a pair of plaid, looks
14 like, undershorts.

15 Q. Are those the items that I asked you about
16 that you received back from OMI on March 27 of 2001?

17 A. Yes.

18 Q. And do those also go with the body to OMI
19 and then were they returned to you?

20 A. Yes, they were.

21 Q. Your Honor, I move the admission of
22 Exhibit 121.

23 THE COURT: Any objection?

24 MR. SINDEL: No objection.

25 THE COURT: Not hearing any objection,

1 Government's Exhibit 121 will be admitted into
2 evidence.

3 (Government Exhibit 121 admitted.)

4 BY MR. CASTELLANO:

5 Q. So tell us about that process, Agent
6 Rhoades. If something like the ligature has
7 potentially evidentiary value but it's wrapped
8 around someone's neck, how does it work in terms of
9 it being sent out to OMI, then being returned to you
10 for purposes of other testing?

11 A. Evidence like that is -- well, any
12 clothing or anything attached to the body eventually
13 is returned to us -- or to me in this case. At that
14 point, I'll make a determination what may have some
15 evidentiary value, forensic value, and what type,
16 and then submit it to the lab.

17 Q. And did you submit items to the lab on
18 April 18 of 2001?

19 A. Somewhere around there, I believe so, yes.

20 Q. If you recall, what did you send to the
21 lab? So are we distinguishing also a crime
22 laboratory from OMI? Are those two different
23 places, for example?

24 A. Yes, it would come from OMI to me, and
25 then to the lab, and then back to me.

1 Q. And if you recall, what items did you send
2 them for testing?

3 A. I believe the ligatures, anything around
4 the neck was submitted. I think the sheets were, if
5 I remember correctly. Possibly his clothing, and
6 maybe the blankets.

7 Q. Did you attempt to collect DNA samples
8 from any of the inmates in the pod?

9 A. Yes, I did.

10 Q. And do you recall who agreed and who did
11 not agree to submit DNA samples?

12 A. I'd have to refer back to my report. I
13 have it documented who submitted. It was a
14 voluntary swab standard.

15 Q. And would it help to refresh your
16 recollection to look at those notes?

17 A. Yes, it would.

18 Q. I'll have you look at those notes to
19 yourself now, and if there is any kind of Bates
20 number or anything else on there so we can identify
21 it, please let us know.

22 MR. SINDEL: Your Honor, may we approach?

23 THE COURT: You may.

24 (The following proceedings were held at
25 the bench.)

1 MR. SINDEL: Your Honor, I would assume
2 that he's going to -- there is going to be testimony
3 that Mr. Gallegos and some other individuals had
4 refused to give a voluntary sample. At this point
5 in time there was no court order. There was no
6 search warrant. There was no legal process
7 whatsoever. Mr. Gallegos didn't have the assistance
8 of or advice of counsel. Therefore, it's our
9 position that it implicates his Fifth Amendment
10 rights and should not be commented on.

11 THE COURT: Are you trying to elicit that
12 testimony?

13 MR. CASTELLANO: I want to get a list of
14 those who agreed and those who didn't, without
15 getting any statements or anything that they said.

16 THE COURT: Do you have any problem with
17 that? Just a list?

18 MR. SINDEL: Yes. But also I would point
19 out to the Court that his was not found, so it's
20 also an issue of relevance.

21 THE COURT: How do we do this? It does
22 seem to me that it is appropriate for them to say,
23 without any sort of comment or something, "Did you
24 get blood samples from this person, this person,
25 this person? And did you check them out?" And they

1 all came back negative. Just leave it at that,
2 without doing a list that doesn't have those --
3 highlighting to the jury that some people did not
4 get tested.

5 MR. CASTELLANO: I'm not sure I was
6 following that. I think, first of all --

7 THE COURT: I think what Mr. Sindel is
8 saying is that if you say, well, these people did
9 and these people didn't, it's the same thing. So
10 can we just do the positive? You've got tests from
11 these people, it came back negative, and not talk
12 about it in the negative, that certain people did
13 not give blood?

14 MR. CASTELLANO: We could. I think the
15 agreement not to agree to DNA testing -- I don't
16 think that's a comment on the right to silence. I
17 think it's nontestimonial. Looking at tattoos or
18 somebody wearing a mask in court, if they look like
19 a person the bank teller saw at the crime scene. I
20 think it's a little different. I think the jury
21 will figure it out regardless. They'll hear all the
22 names in the pod: Who did you take a sample from,
23 but to highlight it --

24 MR. SINDEL: I prefer to highlight than
25 the other.

1 THE COURT: Okay. Could you live with
2 that?

3 MR. SINDEL: I will have to, yes.

4 THE COURT: Okay. Why don't you just ask
5 him who he took samples from and tested, and come
6 back. If you want to make a run after lunch at the
7 case law -- but it strikes me that it's getting
8 close to commenting on the right to silence, and
9 things. But --

10 MR. CASTELLANO: And I don't think I will
11 ask this witness the result of testing. I don't
12 think defense counsel can ask about the result of
13 testing because he is not the person who can
14 properly answer that question.

15 MR. SINDEL: I agree with that. I think
16 it has to come from lab personnel.

17 THE COURT: You're just going to list the
18 people he took samples from?

19 MR. CASTELLANO: Yes.

20 MR. SINDEL: Thank you, Judge.

21 (The following proceedings were held in
22 open court.)

23 THE COURT: All right. Mr. Castellano.

24 MR. CASTELLANO: Thank you, Your Honor.
25

1 BY MR. CASTELLANO:

2 Q. Let me modify my question a little bit,
3 Agent Rhoades, and ask you: From whom did you
4 collect DNA samples on March 26, 2001?

5 A. It's actually going to be -- and I'm
6 looking at the part of my report -- it's going to be
7 listed here, April 5, 2001, that the swab samples
8 were collected.

9 Q. Thank you for that clarification. So is
10 it fair to say you went back a few days later, or --
11 right, maybe a couple weeks later to collect DNA
12 from some of the inmates?

13 A. Yes.

14 Q. Okay. With that clarification, please
15 tell us who provided a DNA sample.

16 A. The inmates that provided the DNA sample
17 were Edward Troup, Victor Felix, Ruben Romero, Angel
18 DeLeon, Richard Lopez, Michael Jaramillo, Chris
19 Pacheco, Eddie Garcia.

20 Q. What was that last name?

21 A. Eddie Garcia.

22 Q. Thank you.

23 A. Gabriel Sanchez and Robert Romero.

24 Q. Was that ten individuals? Did I count
25 that correctly?

1 A. Yes.

2 Q. When you finished this investigation, who
3 were your suspects? Without telling us what anybody
4 said, who were your suspects for the Castillo
5 murder?

6 MR. SINDEL: Your Honor, this is entirely
7 based on all kinds of hearsay, all kinds of
8 conclusions, and it's irrelevant and immaterial who
9 his suspect was.

10 THE COURT: I'd be inclined to agree.
11 Sustained.

12 BY MR. CASTELLANO:

13 Q. Do you know what a cold case is, Agent
14 Rhoades?

15 A. Yes, I do.

16 Q. What is that?

17 A. A cold case often refers to homicide
18 investigation, murder investigation, a case that
19 over some period of time there is no more follow-up
20 on it; it's pretty much shelved, no more work done
21 on it, and it's unsolved.

22 Q. At some point did the Castillo homicide
23 become a cold case?

24 A. Yes, it did.

25 Q. This happened in 2001. Did you eventually

1 get to meet somebody who provided information about
2 this homicide in 2007?

3 A. Yes, I did.

4 Q. Tell us about how that happened.

5 A. In August of 2007, then I was notified by
6 Albuquerque police detective Rich Lewis, who
7 informed me that he had received --

8 MR. SINDEL: I object to anything that
9 Richard Lewis --

10 THE COURT: Are you going to try to elicit
11 what he said?

12 MR. CASTELLANO: I can rephrase, Your
13 Honor.

14 THE COURT: All right. Why don't you ask
15 another question?

16 BY MR. CASTELLANO:

17 Q. Did you get a call from Rich Lewis?

18 A. Yes, I did.

19 Q. And who did he work for?

20 A. He was employed with the Albuquerque
21 Police Department.

22 Q. And do you know what his responsibilities
23 were with the police department?

24 A. He was assigned their cold-case unit.

25 Q. Did he call you to provide information to

1 you?

2 A. Yes, he did.

3 Q. Did he call to have you meet with
4 somebody?

5 A. Yes, he did.

6 Q. Did you meet with somebody after having
7 discussions with him?

8 A. Yes, I did.

9 Q. Who was the person you met with?

10 A. I met with Leonard Lujan?

11 Q. I won't ask you what he said, because it's
12 hearsay. But did Leonard Lujan give you a statement
13 about what happened regarding the Castillo and Garza
14 murders in 2001?

15 MR. SINDEL: That's hearsay, describing
16 exactly what's in the statement.

17 THE COURT: I think probably we've gone as
18 far with this as we need. Sustained.

19 BY MR. CASTELLANO:

20 Q. I'll ask you, did you take a statement
21 from Leonard Lujan?

22 A. Yes, I did.

23 Q. I also want to ask you -- I won't go into
24 this yet, but were you involved in the investigation
25 of a homicide regarding Freddie Sanchez in 2007?

1 A. Yes, I was.

2 Q. What were your responsibilities at that
3 time?

4 A. At that time and for that investigation I
5 was assigned to the crime scene unit, and that was
6 my function.

7 MR. CASTELLANO: May I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 MR. CASTELLANO: Thank you, Your honor.
11 I'm going to pass the witness at this time, but I'll
12 let the Court know, because we're not on the Freddie
13 Sanchez murder, that we will be recalling Agent
14 Rhoades for that testimony later in the trial.

15 THE COURT: All right. Let me see counsel
16 up here at the bench.

17 (The following proceedings were held at
18 the bench.)

19 THE COURT: How do the defendants want to
20 proceed? Do y'all want to do your cross or do you
21 want to wait? What's your preference?

22 MR. SINDEL: My preference would be to
23 wait. There is a lot of stuff that I have, but I
24 can be ready tomorrow.

25 THE COURT: Okay. Would that work for

1 y'all? Recall him tomorrow, so they can do their
2 cross?

3 MR. CASTELLANO: Are we putting another
4 witness on the stand?

5 THE COURT: We're going to put Lujan here.

6 MR. BECK: I think what --

7 THE COURT: Let's do this: We'll continue
8 him in the morning. What do you want me to say? Do
9 you want me to say we're doing some adjusting of
10 witnesses to help with witness scheduling, and he'll
11 be back tomorrow for cross? Does that work for you?

12 MR. SINDEL: That does. It's all the
13 prosecution's fault. If you could add that, if you
14 would.

15 THE COURT: You'd like me to add a lot,
16 wouldn't you?

17 MR. SINDEL: I'm working --

18 MR. CASTELLANO: Call it the luck of the
19 Irish.

20 MR. SINDEL: I'm not Irish.

21 MR. CASTELLANO: Neither am I.

22 THE COURT: While we're up here, there is
23 a case I'll add to my list of things for you to look
24 at. It's an old case. It's Chief Judge Winter from
25 the Fourth Circuit, United States v. Watson, 496

1 F.2d 1125, 1973. He seems to indicate that after
2 Furman, it didn't eliminate all the capital offense
3 cases, so those things still apply. So what he had
4 in this case, he applied the two learned counsel to
5 all the cases that had -- that were capital, were
6 punishable by death at that time. Furman, of
7 course, they didn't even have a death penalty case,
8 so there is case law going the other way. But it is
9 an interesting interpretation here. After Furman,
10 they repealed all the statutes. Some basis for
11 interpreting --

12 MR. BECK: I mean, I'm not sure how we
13 come down on that.

14 The second question is: If it's a capital
15 case, what's the remedy? And the remedy is just
16 time for them to prepare for witnesses. It's not
17 exclusion of a witness. A violation of the statute
18 doesn't invoke the exclusionary rule unless there is
19 a Fourth or Fifth Amendment violation.

20 THE COURT: Let's do this: We'll pick
21 this up. Y'all have another witness you want to
22 call?

23 MR. BECK: We have another witness.

24 THE COURT: All right.

25 MR. SINDEL: You don't want to call.

1 MR. BECK: I think we're trying to get in
2 the evidence here, and hopefully, that will get us
3 to the end of the day. And we might have to call
4 later on today --

5 THE COURT: Do they know who you're about
6 to call?

7 MR. BECK: Robert Duncan, and I think
8 Felipe Gonzalez, one of those two.

9 MR. SINDEL: Matt, just so I have some
10 thought process, it would be my preference to -- if
11 I do this officer tomorrow -- which will take some
12 time to prepare for that -- I won't have to worry
13 about preparing for Lujan and trying to cogitate the
14 other issues that surround my cross-examination of
15 him.

16 THE COURT: Are you going to try to put
17 Lujan on today?

18 MR. BECK: We're trying not to put Lujan
19 on today --

20 THE COURT: You're trying not to?

21 MR. BECK: -- but we're scrambling to find
22 people that can get in here.

23 THE COURT: Well, it sounds like you
24 wouldn't have to cross them anyway right now. Why
25 don't we go ahead and get somebody started, and

1 we'll take a lunch break. Then we'll go from there.
2 If they have more information by 2:30 --

3 MR. CASTELLANO: May I inquire, on Phillip
4 Gonzales, if they've made a decision? He's working
5 and wants to get back to work. Are they going to be
6 recalling him? I guess the only issue was whether
7 there would be cross-examination.

8 MR. SINDEL: I don't have anything on
9 Gonzales. He did the Garza --

10 MR. CASTELLANO: Phillip Gonzales.

11 THE COURT: Do you need him?

12 MR. SINDEL: The search warrant -- I
13 haven't looked at that, with everything else. I can
14 do that over the lunch hour.

15 MR. CASTELLANO: Maybe we can finish him
16 today?

17 MR. SINDEL: Yes. It's liquid.

18 THE COURT: It's trial work.

19 (The following proceedings were held in
20 open court.)

21 THE COURT: All right. We're working on
22 some scheduling of witnesses here. So what's going
23 to happen is, Mr. Rhoades is going to step down, and
24 we're not going to do the cross-examination right
25 this minute. He's going to be back tomorrow and

1 cross-examined by the defendants. The Government is
2 going to call another witness we need to get on the
3 stand. I think his name is Mr. Duncan; is that
4 correct?

5 MR. BECK: Yes.

6 THE COURT: So Mr. Rhoades, you may step
7 down. You're in the middle of your examination,
8 about to be crossed, so don't discuss your testimony
9 with anyone. But you are free to leave the
10 courthouse because you're not going to be called
11 back today.

12 THE WITNESS: All right.

13 THE COURT: Thank you, Mr. Rhoades.

14 THE WITNESS: Do I leave the evidence
15 there?

16 THE COURT: Just leave that there.

17
18
19
20
21
22
23
24
25

1 April 20, 2018

2 THE COURT: Does the Government have its
3 next witness or evidence?

4 MS. ARMIJO: Your Honor, Mr. Rhoades will
5 take the stand again, but he's going for
6 cross-examination at this time.

7 THE COURT: Okay.

8 MS. ARMIJO: We'll go get him.

9 THE COURT: Mr. Rhoades, if you'll come
10 and resume your place in the witness box, I'll
11 remind you you're still under oath.

12 Mr. Sindel, are you going to cross-examine
13 Mr. Rhoades?

14 MR. SINDEL: Your Honor, may we approach?

15 THE COURT: You may.

16 (The following proceedings were held at
17 the bench.)

18 MR. SINDEL: Yesterday Your Honor
19 referenced the Rubicon. And this individual did
20 interview Mr. Jaramillo, so I mean, we may -- this
21 is, as far as I can tell, the banks of the river.
22 I'm not going to ask him any questions on it. But I
23 just want to, out of all caution, make sure that the
24 Court's aware that this individual is the first one
25 we've had that has any information concerning the

1 statements made by Mr. Jaramillo.

2 THE COURT: If Mr. Jaramillo were to
3 testify in this case, would you do anything
4 differently in your cross-examination here of
5 Mr. Rhoades?

6 MR. SINDEL: I don't intend to ask him any
7 questions.

8 THE COURT: Either way?

9 MR. SINDEL: I would say this: I'm going
10 to ask -- and I can say it right now -- I'm going to
11 ask he be subject to recall, just in case.

12 THE COURT: Let's do that, and that will
13 give me a little bit more time to absorb -- and I
14 understand y'all are preparing a response to the
15 Government's brief that I got this morning.

16 MR. SINDEL: You're looking at me, but you
17 should be looking at him.

18 THE COURT: I did. All right. So
19 we'll --

20 MR. CASTELLANO: Approach because
21 Mr. Jaramillo's responses would be hearsay
22 regardless of whether or not he's a witness. So I
23 think that's right, we can't get into his statements
24 either way at this point.

25 MR. SINDEL: If you object, we can't get

1 into it.

2 THE COURT: So we'll proceed that way.
3 Why don't we take all this up at the break? Is that
4 all right?

5 MR. SINDEL: Sure.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: All right. Let's go ahead and
9 take our morning break. We'll be in recess for
10 about 15 minutes. All rise.

11 (The jury left the courtroom.)

12 THE COURT: All right. We'll be in recess
13 for about 15 minutes. Mr. Benjamin, did you say --
14 I got your notice. Did you say there was some
15 material from doctors or things?

16 MR. BENJAMIN: There should have been
17 Exhibit A, Your Honor.

18 THE CLERK: I'll look it up.

19 THE COURT: Look at 2067. If there is
20 something else -- there is no reference to any
21 exhibits.

22 MR. BENJAMIN: May I approach, Your Honor?
23 Because my staff --

24 THE COURT: If there is something else I
25 need to look at, let me know, but that's what I dug

1 out.

2 THE CLERK: What document number is it?
3 2067?

4 MR. BENJAMIN: And he's right, there is no
5 exhibit referenced in here.

6 THE COURT: So there is something I need
7 to look at.

8 MR. BENJAMIN: There should have been.

9 (The Court stood in recess.)

10 THE COURT: I think every defendant is in
11 the room. We've got a lawyer for each one.

12 Mr. Benjamin, did you determine if there
13 was anything else I have?

14 MR. BENJAMIN: It doesn't appear. I'm
15 trying to pull up the document and it doesn't appear
16 it was attached like I intended it to be. So I will
17 give the Court and Ms. Armijo a copy. Ms. Armijo
18 has been e-mailed a copy.

19 THE COURT: What's your thoughts on this?

20 MS. ARMIJO: He indicated it was just a
21 foundation witness, but the stipulation he sent me
22 yesterday had all sorts of opinions and more. I
23 sent him a stipulation that really would have been
24 one foundation sentence and, I don't know if they've
25 accepted that.

1 MR. BENJAMIN: I apologize. I haven't
2 seen that.

3 THE COURT: Well, y'all look at that, and
4 let me know if there is something I need to decide.

5 All right. All rise.

6 (The jury entered the courtroom.)

7 THE COURT: All right. Let's talk about
8 something very important. That's lunch. Some of
9 the party are wanting to make arrangements and stuff
10 for lunch, so to help them plan, everybody wants to
11 know what y'all, the jurors want to do. So my
12 thoughts are that we would go about quarter till
13 12:00, and we can either take a 15-minute break then
14 and go an hour and a half and have a late lunch; or
15 we can just take our lunch break at 11:45. How many
16 of you want to take your lunch break at 11:45? How
17 many want to do a late lunch?

18 So parties, for planning your lunch plans,
19 plan on us taking lunch at 1:30.

20 Mr. Rhoades, I'll remind you you're still
21 under oath.

22 Mr. Sindel, if you wish to cross-examine
23 Mr. Rhoades, you may do so at this time.

24 MR. SINDEL: I do, Your Honor.

25 THE COURT: Mr. Sindel.

1 NORMAN RHOADES,
2 after having been previously duly sworn under
3 oath, was questioned, and continued testifying
4 as follows:

5 CROSS-EXAMINATION

6 BY MR. SINDEL:

7 Q. Good morning.

8 A. Good morning.

9 Q. I introduced myself to you just a few
10 minutes ago. We've never met before; is that right?

11 A. That's correct.

12 Q. Now, you don't know this, but I'm not from
13 New Mexico. I'm not from any of the bordering
14 states. I'm from Missouri. So there may be some
15 things I ask you about, there may be some acronyms
16 that you use that are unfamiliar to me, so just bear
17 with me. Is that okay?

18 A. Sure.

19 Q. I guess the first thing is, when was it
20 that you know of that you, a supervisor, or anyone
21 else connected with either the Department of
22 Corrections or law enforcement contacted the OMI?
23 And before we answer that question, what is the OMI?

24 A. OMI is Office of the Medical Investigator.

25 Q. Okay. And then their function would be to

1 investigate suspicious deaths?

2 A. They actually will -- yeah, you could say
3 suspicious deaths. I think they respond to other
4 deaths, as well.

5 Q. But I mean, they can respond to suicides,
6 they can respond if necessary to automobile
7 accidents, to what appears to be a homicide, or
8 anything that has a certain level of suspicion that
9 requires an additional investigation?

10 A. That's correct.

11 Q. Okay. Now, when did you or anyone else
12 that you were aware of contact the OMI about what
13 you were -- what you had been dispatched to take
14 care of?

15 A. I don't know when they were notified. I'm
16 not sure who notified them.

17 Q. Well, would that have been something that
18 would have been appropriate for someone either in
19 your capacity, or your supervisor, to make sure that
20 they were notified immediately?

21 A. Nowadays that's --

22 Q. Not nowadays.

23 A. But back in that day, no.

24 Q. Okay. Was there, in fact -- is there, in
25 fact, a statute that covers this particular

1 situation?

2 A. The statute that I'm aware of gives the
3 OMI the authority over the body.

4 Q. Correct. And that statute says that when
5 any person comes to a sudden violent or untimely
6 death -- which is obviously what you believed
7 happened with Mr. Castillo?

8 A. Yes, sir.

9 Q. -- or is found dead and the cause of death
10 is unknown, anyone -- anyone who becomes aware of
11 the death shall report it immediately to law
12 enforcement authorities. Is that your understanding
13 what the statute says?

14 A. Yes, sir.

15 Q. Or the office of the state or district
16 medical investigator, which would be the OMI?

17 A. Yes.

18 Q. And the public official so notified -- so
19 it can go either from the OMI people or the police;
20 correct?

21 A. That's correct.

22 Q. -- shall in turn notify either/or both the
23 appropriate law enforcement authorities or the
24 office of the state or district medical
25 investigator. The state or district medical

1 investigator or a deputy medical investigator under
2 his direction shall, without delay, view and take
3 legal custody of the body; correct?

4 A. Yes.

5 Q. So when was it that you're aware of that
6 anyone followed that particular statute?

7 A. I don't know.

8 Q. Okay. When was it that you were aware of
9 that someone from the OMI, the investigative team,
10 showed up at the prison to do their work?

11 A. I think I first saw them around 9:30,
12 10:00, maybe as late as 10:30 p.m. that night.

13 Q. Would that be more than 12 hours after you
14 were initially dispatched to the area?

15 A. I'm thinking so, yes.

16 Q. Would, in your opinion, that meet any
17 definition of "immediate"?

18 A. By how I understand the statute you read,
19 it would, that law enforcement was notified
20 immediately.

21 Q. But doesn't it say then if law enforcement
22 is notified, they have to immediately notify the
23 Office of the Medical Investigator?

24 A. I don't know. I'd have to read the
25 statute, I guess, and study it.

1 Q. "The public official so notified shall in
2 turn notify either/or both the appropriate law
3 enforcement authorities." That would be you guys;
4 right?

5 A. Yes.

6 Q. Or the office of the state or district
7 medical investigator; correct?

8 A. Yes.

9 Q. So that the obligations for that run both
10 ways. If the investigator gets notified, they call
11 you. If you get notified, you call them; right?

12 A. "Them" meaning the OMI?

13 Q. Yes.

14 A. Yes.

15 Q. And what the OMI does is they do things
16 like take the internal body temperature of the
17 deceased?

18 A. Yes, I believe that's one function they
19 do.

20 Q. And they also evaluate any physical
21 characteristics that might contribute or be
22 important to determining the manner and means of
23 death?

24 A. Yes.

25 Q. And that is their area of expertise?

1 A. That's their function. I don't know
2 expertise, but that's their function. That's their
3 training.

4 Q. Well, you don't have a bunch of idiots out
5 there doing that, do you?

6 A. Hopefully not.

7 Q. You understand -- you've seen them work,
8 haven't you?

9 A. Yes, I have.

10 Q. They seem to be well-trained and capable?

11 A. For the most part, yes.

12 Q. Okay. For the most part. Are there some
13 people that just stumble around and don't know what
14 they're doing that work for the State of New Mexico
15 at the OMI department?

16 A. I've run across on a few occasions either
17 they were untrained, apathetic appearing, or not
18 aware of their function. Not often, but there have
19 been at times in my career.

20 Q. What about the people that responded to
21 the prison facility? Did they seem to be
22 appropriately trained and capable?

23 A. Yes, they are very capable.

24 Q. Okay. So whatever you've seen from other
25 employees of that particular department, that wasn't

1 apparent in anything you saw at the facility?

2 A. No.

3 Q. Now, did you understand that -- and
4 everything I'm going to ask you I think is going to
5 be related to Mr. Castillo. Okay?

6 A. Okay.

7 Q. So if I don't use his name in the
8 introduction, you know who I'm talking about.

9 A. Okay.

10 Q. Did you understand that someone had moved
11 Mr. Castillo's body before you actually arrived at
12 the scene?

13 A. Yes, I did.

14 Q. And was that the physician Rebecca (sic)
15 Stellman?

16 A. Her or the nurse, one of the two that
17 first responded, yes.

18 Q. And they had rolled him over in order to
19 check his vital signs; is that correct?

20 A. That's what I understood, yes.

21 Q. And do you understand that they initially
22 said when they got there, he was facing the wall?

23 A. I thought they said he was face-down.

24 Q. Okay. Do you have any indication -- you
25 brought your report with you, didn't you?

1 A. Yes, I did.

2 Q. You reviewed that before testifying; is
3 that correct?

4 A. Yes.

5 Q. Is there anything in your report that
6 indicates that -- and you interviewed her, the
7 doctor; right?

8 A. Yes, I did.

9 Q. And was there anything in your report
10 concerning what she claims she had observed at the
11 time she initially entered Mr. Castillo's cell?

12 MR. CASTELLANO: Objection, calls for
13 hearsay.

14 THE COURT: Well, I think it would.
15 Sustained.

16 MR. SINDEL: I just really asked if it was
17 in the report at this point.

18 THE COURT: Well, I think it was a
19 different question. You were --

20 MR. SINDEL: I'll rephrase it.

21 BY MR. SINDEL:

22 Q. Is there an indication in the report
23 concerning your interview of Rebecca Stellman?

24 A. Yes, sir, there is.

25 Q. And as far as you're concerned, would your

1 notes from that particular report be the most
2 accurate reflection of what she told you?

3 A. Yes.

4 Q. Okay. Now, when you -- you come from the
5 same facility I think that Officer Venegas comes
6 from, the same police department?

7 A. Yes.

8 Q. And if he told you you guys are
9 well-staffed and well-equipped, would that be
10 accurate?

11 A. It's adequate. We could be better
12 equipped and staffed.

13 Q. Agent, there is hardly a police department
14 in the country that couldn't ask for more equipment
15 or better facilities; right?

16 A. That's correct.

17 Q. Sometimes, you know, you're the stepchild.

18 A. It seems so.

19 Q. But did you have available to you
20 tape-recorders at your police department?

21 A. Yes.

22 Q. Did you have cameras?

23 A. Some of the agents did, yes.

24 Q. Did you have a camera that was available
25 to you?

1 A. I think I did. I don't specifically
2 recall. It was an old one if I did.

3 Q. Do you know how to use a camera?

4 A. I do now, yes.

5 Q. Did you know how to use a camera then?

6 A. Not that well. Training was pretty much
7 nil on it.

8 Q. Well, if you want to take a picture, do
9 you normally just point the camera at the thing and
10 press the shutter?

11 A. If it's on automatic mode, yes.

12 Q. Did you take a camera inside the facility?

13 A. No.

14 Q. Did you ask any of the other officers if
15 they had a camera that could be used inside the
16 facility?

17 A. No.

18 Q. Now, would it be fair to say that, you
19 know, in terms of doing an investigation, what you
20 want to do is preserve what you can see with your
21 eyeballs through some means?

22 A. That's correct.

23 Q. Like a camera?

24 A. Yes, sir.

25 Q. And so that -- and that especially in

1 situations of suspicious death, you want to kind of
2 preserve and record certain things as soon as
3 possible?

4 A. Ideally, yes.

5 Q. But there wasn't anybody that -- as far as
6 you know, there wasn't anybody there taking any
7 photographs until Mr. Duncan arrived from
8 Albuquerque?

9 A. To my knowledge that is true.

10 Q. And to your knowledge, does the Department
11 of Corrections also have cameras, video recorders,
12 things like that, so they can preserve certain
13 events that occur within the prison walls?

14 A. Yes, they do.

15 Q. Do you know whether or not anyone from the
16 Department of Corrections ever reached down into a
17 locker and pulled out a video camera or a camera in
18 order to take pictures early in the morning so that
19 information was well-preserved?

20 A. Not that I recall, no.

21 Q. And did you ask any of the other officers
22 who were there conducting the investigations
23 assisting you in that regard whether they could
24 either secure a camera or walk out to their car to
25 get a camera or anything like that?

1 A. No, I did not.

2 Q. So the first time that you're aware of
3 that anyone came in there with a camera in order to
4 properly preserve the scene that you had observed
5 was when Mr. Duncan, awash with coffee, showed up?

6 A. That they entered the scene?

7 Q. That anyone ever took a photograph.

8 A. To my recollection, that was the first
9 photos taken, when Robert Duncan arrived.

10 Q. Did one of the things that you did that
11 day include securing logs and information about the
12 inmates?

13 A. Yes, it was.

14 Q. And you were aware -- let me ask you. I
15 don't mean to assume. Have you been involved in
16 other investigations at the various prison
17 facilities in the past?

18 A. Yes, I have.

19 Q. So when you walk through those doors, you
20 kind of know what to anticipate, what to expect?

21 A. Yes, except this was my first time for a
22 prison homicide, so...

23 Q. Okay. Had you gone to the prison
24 facilities for other things other than a homicide,
25 other criminal acts?

1 A. I might have, but I don't recall. I was
2 fairly new into investigations during this time.

3 Q. Okay. So in other words, this might be
4 your first time to have the egg broken?

5 A. Yes, sir.

6 Q. So forgive me for saying so, but I think
7 you did a pretty thorough job. You then went in
8 there -- were you aware that they had certain logs
9 about inmate movements?

10 A. I became aware of that when we briefed
11 with the corrections officers after I arrived there,
12 that they had logs and different things.

13 Q. And when you say "correction officers,"
14 were those kind of the men on the line or were those
15 supervisors who would have more of a global view of
16 how that institution was run?

17 A. It would be the supervisors or the
18 administrative staff.

19 Q. So you know, knowing what you needed to
20 do, you went in there and said, "Okay, give me an
21 idea of what I'm looking at here, and what I can
22 find out that might assist me in making a proper
23 assessment of what happened and why."

24 A. That's correct.

25 Q. And did you get information that led you

1 then to try to secure logs concerning inmate
2 movements?

3 A. Yes.

4 Q. You wanted to know who was in the
5 particular pod, Mr. Castillo's pod; right?

6 A. That's correct.

7 Q. You wanted to know when they came in and
8 when they left?

9 A. Yes.

10 Q. And you wanted to know, in particular,
11 when their doors were locked and when they were
12 open?

13 A. That's correct.

14 Q. Your assumption had to be, if Mr. Castillo
15 was in his cell and his door is locked and no one
16 else is with him, nothing could have happened to him
17 during that period of time, because it was obvious
18 it's a homicide; right?

19 A. Yes, sir.

20 Q. You had no belief in any sense that he had
21 self-inflicted these wounds; right?

22 A. No.

23 Q. So that was an important step that you
24 wanted to assess and determine. Did you also learn
25 from those supervisors the job functions and

1 requirements of the correctional officers that would
2 have been there in the pod from the time, from March
3 25, all the way through the time that the deceased
4 was first found?

5 A. That's correct.

6 Q. So you know, you're trying to lock in a
7 period of time when this could have occurred.

8 A. Yes.

9 Q. That was important, wasn't it?

10 A. Yes, it was.

11 Q. And that remained sort of a fluid concept
12 during the course of your entire investigation,
13 didn't it?

14 A. Yes.

15 Q. And so when you went to interview the
16 staff that were there and had those
17 responsibilities, do you remember the names of the
18 people that you talked to?

19 A. Some of them, yes. Others, I'd have to
20 refer back to my report.

21 Q. If at any time you feel the need to
22 refresh your memory from 17, 18 years ago, go right
23 ahead. I don't have any problem with it. Because
24 I've got this thing, too, just like you do. So I
25 don't want to stop you from refreshing your memory.

1 But there were -- there was a person that you
2 understand was in the, quote, unquote, "control
3 center"?

4 A. Yes.

5 Q. And had you sat up there, stood up there
6 in the control center and determined what you could
7 visualize, what you could see from there?

8 A. No, I don't believe I got up into that.

9 Q. Did you talk to the individual in the
10 control center?

11 A. Yes, I did.

12 Q. Did you understand from talking to the
13 supervisors and the individuals who actually man
14 that position that the idea is to take a -- they get
15 the panorama of the cells that are in front of them
16 so they can see any activities that's either
17 suspicious or maybe even just normal?

18 A. That's correct, yes.

19 Q. So there is sort of this one guy who has a
20 panorama, and he's in the control center. And do
21 you remember who it was that was in the control
22 center?

23 A. I believe it was -- his last name was
24 Pedraza.

25 Q. Pedraza. James Pedraza?

1 A. Yes.

2 Q. And also at the prison there are various
3 shifts that work, you know. Just like any factory
4 that's open 24 hours day, they have a day shift, an
5 afternoon shift, then what you call a graveyard
6 shift; right?

7 A. Yes.

8 Q. When does the graveyard shift start, if
9 you recall?

10 A. I believe it's around 10:00 p.m. to 6:00
11 a.m., if I remember correctly.

12 Q. Got it. And then so 10:00 p.m. to 6:00
13 a.m., that's a primary area of your focus, isn't it,
14 at least one of them?

15 A. One of them, yes.

16 Q. I mean, after you'd done some
17 investigation, you weren't looking for people that
18 were in that afternoon shift of March 25; right?

19 A. That's correct.

20 Q. You had narrowed the focus of your
21 investigation to sometime during the evening hours
22 of March 25 up until the early morning hours of
23 March 26?

24 A. Yes.

25 Q. And the other people that then worked

1 there regularly with the inmates on that pod -- one
2 of them is called a rover?

3 A. Yes.

4 Q. So you wanted to interview anyone who was
5 in the control center from 10:00 p.m. to 6:00 a.m.;
6 correct?

7 A. Yes.

8 Q. And anyone who was in the control center
9 from 6:00 a.m. to the time the body was found?

10 A. Yes.

11 Q. And you did that; right?

12 A. Yes, I did.

13 Q. And was there anything that you learned
14 from the individuals in the control center that
15 assisted you in any way in trying to determine
16 exactly when this homicide occurred?

17 A. No.

18 Q. So then the next group of people that are
19 out there are called rovers.

20 A. Yes.

21 Q. And did you understand that the
22 responsibility of the rover was to actually be on
23 the tier or inside the pod?

24 A. At least on an hourly basis, yes.

25 Q. Right. In other words, the guy in the

1 control center, he's sort of up and away; he's even
2 with the second floor?

3 A. Yes.

4 Q. And Mr. Garcia's (sic) body was found on
5 the second floor. That's where his cell was
6 located; right?

7 A. Yes.

8 Q. And there is somebody, the rover, who goes
9 around from cell to cell and does whatever his
10 duties require?

11 A. That's correct.

12 Q. And did you understand from talking to the
13 supervisors and what you understood about the
14 regulations and rules of the prison that one of the
15 main duties of a rover was to check inmates inside
16 their cell?

17 A. That's correct.

18 Q. And you understood from talking to the
19 supervisors that an inmate count, one, has to be
20 done regularly?

21 A. Yes.

22 Q. Two, has to be done carefully?

23 A. Yes.

24 Q. And three, has to be verifiable?

25 A. Yes.

1 Q. Because they don't want, "Uh-oh, we've
2 lost somebody"; right?

3 A. That's correct.

4 Q. If they lost somebody, then that could be
5 a problem for the entire community.

6 A. Could be, yes.

7 Q. So that was another area where you wanted
8 to make sure that you focused your attention?

9 A. That's one, yes. Some of that is one of
10 them.

11 Q. And did you talk to the rovers who were
12 assigned to this particular pod both on the 10:00
13 p.m. to 6:00 a.m. shift and the 6:00 a.m. to around
14 9:00 a.m. shift?

15 A. Yes, I did.

16 Q. Do you remember the names of the rovers
17 who actually had that responsibility?

18 A. I remember two of them, and I think I
19 remember the third one.

20 Q. Was there a gentleman named Jesus
21 Sandoval?

22 A. Yes.

23 Q. Do you remember which one he was
24 responsible for, which shift?

25 A. His shift was on the morning of the 26th,

1 from 6:00 a.m. past the 9:00.

2 Q. From 6:00 a.m. to when the body was
3 discovered; correct?

4 A. Yes.

5 Q. And do you remember the name of the
6 individual who had the responsibility for checking
7 the cells from 10:00 p.m. to 6:00 a.m.?

8 A. Yes, I do.

9 Q. And can you tell the jury what his name
10 was?

11 A. His name is Marciela --

12 Q. Garcia?

13 A. Garcia, yes.

14 Q. It's not a test. All right. You got, as
15 a detective, to focus on what you think is the most
16 important part of this case of any investigation,
17 especially a homicide.

18 A. It was one of the important aspects, I
19 felt.

20 Q. And certainly talking to the individual
21 who had the responsibilities of making sure that the
22 count was accurate -- that was important?

23 A. Yes.

24 Q. Did you understand from talking to the
25 supervisors and from the correctional officers there

1 on the ground that one of their obligations not only
2 was to count to see if someone was in his cell, but
3 whether they were living, breathing flesh?

4 MR. CASTELLANO: Objection. Calls for
5 hearsay. His understanding is based on what other
6 people told him.

7 THE COURT: I think his understanding here
8 would be that. So sustained.

9 BY MR. SINDEL:

10 Q. Let me ask you this. Would it seem to be
11 reasonable to you as an investigator that one of the
12 things a rover would have to do is make sure that if
13 an inmate was in there, it was a living inmate?

14 A. Yes, it would.

15 Q. And that that inmate could either be a
16 dummy or they could be, like Mr. Castillo, dead?

17 A. That's correct.

18 Q. So that was something that you -- at least
19 from your perspective, it would have been important
20 to do?

21 A. Yes.

22 Q. And had you heard the phrase "living,
23 breathing flesh" before I said it?

24 A. I had heard the phrase "moving flesh."

25 Q. And was that in connection with the

1 responsibilities of the rover?

2 A. Yes, it was.

3 Q. And did you understand that the rover
4 basically did hourly checks of the cells in the pod?

5 A. Yes.

6 Q. And they would go to the lower cells and
7 they would go to the upper cells and make sure that
8 the inmate was there and the inmate was alive?

9 A. That's correct.

10 Q. And if they had some questions, did you
11 understand that they had some alternatives or other
12 avenues to pursue, other than just looking inside
13 through the window?

14 MR. CASTELLANO: Objection, calls for
15 hearsay.

16 THE COURT: Well, if he can answer the
17 question without reference to hearsay. You might
18 ask the question a different way.

19 MR. SINDEL: I'll try a little different.

20 BY MR. SINDEL:

21 Q. There are these windows in the door;
22 right?

23 A. Yes.

24 Q. Did you understand that also the rovers
25 had flashlights?

1 A. Yes.

2 Q. And did you understand in terms of making
3 the assessment of the viability or whether the
4 individual was alive inside the cell, they had other
5 ways to determine that, besides looking in at the
6 object laying there in the bed?

7 A. Yes, I did.

8 MR. CASTELLANO: Hearsay, Your Honor. May
9 we approach?

10 THE COURT: You may.

11 (The following proceedings were held at
12 the bench.)

13 THE COURT: I just don't know what's in
14 his head. He may be walking around watching them.
15 He's there 12 hours a day. He may have observed.
16 And on the other hand, he may have gotten this -- I
17 don't know what's --

18 MR. CASTELLANO: I agree. I think if he's
19 observed things with his own eyes, that is fair
20 game. But Agent Rhoades is not a corrections
21 officer. I let a certain amount of hearsay in, but
22 every time he says --

23 THE COURT: How long was he out there,
24 days and hours?

25 MR. SINDEL: Twelve hours on this day.

1 MR. CASTELLANO: The whole day.

2 THE COURT: Would you be willing to do
3 this? Would you tell him that you're going to ask
4 him a series of questions about his understanding,
5 what he knows, so that we can get his information in
6 front of the jury in a proper way? If he saw them
7 and observed these things, he can testify about
8 that. If, instead, he got the information from
9 other people, he's to alert you that somebody told
10 him; and that what he thinks he observed, he can
11 testify about it.

12 MR. CASTELLANO: Right. Because this
13 whole line of questioning is based on his
14 understanding, which is largely from interviews of
15 what people told him. I agree, if he observed
16 things with his own eyes, I think that is fair game.

17 MR. SINDEL: I think theoretically we're
18 beating around the bush because they have listed on
19 the witness lists the rovers who have those
20 responsibilities. We've already heard from
21 Mr. Roark. I'll do whatever you want me to do.

22 THE COURT: The Government is letting some
23 hearsay in and not others, so I've got to do my job.
24 So why don't you just ask him if he had that
25 understanding. If he saw it, saw these things

1 happening and he could testify about it, fine. And
2 if it's just something somebody told him, then he's
3 got to alert you. Does that work?

4 MR. CASTELLANO: Yes, sir.

5 THE COURT: Let's try that.

6 MR. SINDEL: All right.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: Mr. Rhoades, you're going to
10 be asked a series of questions by Mr. Sindel. You
11 were out there at the facility a fair amount. So if
12 you saw these things and can testify from your
13 observations, you can testify. If, on the other
14 hand, it was just something somebody told you, then
15 you're going to have to tell Mr. Sindel that "That's
16 something that somebody told me," and we'll see if
17 Mr. Castellano wants to object. But that's probably
18 the way we're going to have to proceed. All right?

19 THE WITNESS: Yes, sir.

20 THE COURT: So if you saw it, you can
21 answer Mr. Sindel's question. If you just were told
22 it, tell him, and then we'll see what Mr. Castellano
23 has to say.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Sindel.

1 BY MR. SINDEL:

2 Q. How many hours were you out there that day
3 on March 26, 2001? Let me ask you this. Let me
4 rephrase, and you can stop me. Were you there until
5 the early morning hours of March 27?

6 A. Seems like it. I have to refer back to my
7 report when I left there.

8 Q. If we heard testimony that Mr. Duncan was
9 there until after midnight, would that be consistent
10 with your memory -- you were there when Mr. Duncan
11 was there; correct?

12 A. Yes, sir.

13 Q. Your obligations as an investigating
14 officer is to allow them to do their work, but there
15 may be certain things you want them to focus on;
16 right?

17 A. That, and I want to be there to observe
18 what's going on, as well.

19 Q. When Mr. Duncan is doing his job, you may
20 not be bossing him, but you're contributing to what
21 he does.

22 A. Contributing or at least observing, yes.

23 Q. And did you do that?

24 A. Yes, I did.

25 Q. So if he said he was there until after

1 midnight, you know, and having breaks and food
2 breaks and coffee breaks and everything else, that
3 would be consistent -- or you wouldn't dispute that?

4 A. That's correct.

5 Q. And that's not the first time that you
6 went to that institution in order to further your
7 investigative efforts, was it?

8 A. No.

9 Q. During the course of, you know, a long
10 period of time, you returned there and made some
11 observations?

12 A. Yes, I did.

13 Q. You also interviewed people over a period
14 of time?

15 A. Yes, sir.

16 Q. When you were there, did you -- you said
17 you didn't go in the control center. Did you ever
18 visualize or see anybody in the control center, a
19 correctional officer?

20 A. Yes, I did.

21 Q. All right. So you would see, you know,
22 those guys up there doing their job?

23 A. Yes.

24 Q. And during the many, many times you went
25 there, the 12 or 13 hours or 14 hours you spent from

1 March 26 to March 27, did you also see rovers
2 performing their function?

3 A. I'm sure they did. I don't recall. I
4 probably didn't pay much attention to them.

5 Q. But when you see -- you could see them
6 going from cell to cell for the counts; right?

7 A. Yes, there was a lot of -- when I was
8 there during that time, there were a lot of
9 corrections officers in and out, so I wasn't really
10 paying attention to what they were specifically
11 doing.

12 Q. But the other thing is when you would go
13 there on times other than this March 26 to March 27,
14 you would also be in a situation to observe their
15 performance of their obligations and duties even if
16 it was a casual observation? I'm not saying you're
17 writing it down, but you're watching it.

18 A. If I were in the pod, yes. I don't
19 remember after this date coming back for follow-up.
20 I don't recall going back into the cell or the pods.

21 Q. I'm not talking specifically about that
22 pod. But did you ever see any rover in any pod
23 performing their function of checking on the
24 inmates?

25 A. I don't specifically recall seeing it.

1 Q. Well, did you in your investigation focus
2 with Mr. Sandoval and with Mr. Garcia on what you
3 understood to be their obligations to do cell
4 checks?

5 A. Yes, I did.

6 Q. And would it be fair to say that in
7 focusing on that, you were aware of those
8 obligations?

9 A. Yes.

10 Q. And that it became at some point very
11 important for you to determine whether the duties
12 and responsibilities were carried out?

13 A. Yes.

14 Q. And were you ever in the institution --
15 and I'm talking about that day or any other day --
16 when they called count?

17 A. I don't recall anything, no.

18 Q. If you were there for 12 hours, do you
19 think for that whole time they never counted any of
20 the inmates?

21 A. They might have. I don't recall being
22 aware of it, though, specifically.

23 Q. Okay. But you have no question in your
24 mind that that was one of their primary functions,
25 was to ensure that they had the same number of

1 inmates there as they had on their books?

2 A. Yes.

3 Q. Now, when you got there at 9:00, were
4 there any inmates in that pod, either in their cells
5 or wandering around?

6 A. There was none wandering around, and I
7 don't recall if they were inside or not.

8 Q. Well, did you understand, at least, and
9 did you want to be in a position where you had
10 access to the tier without concern for someone
11 messing around with possible evidence?

12 A. That would be correct, yes.

13 Q. And there was red tape that we saw on the
14 door, and there was yellow tape that we saw on the
15 stairway. Would it be fair to say that in your
16 training and in your carrying out your
17 responsibilities, especially at a homicide scene,
18 you want to make sure that it's kept as pristine as
19 possible until you've done your investigation?

20 A. Yes.

21 Q. Until you've taken the photographs?

22 A. That's correct.

23 Q. And until you've made sure that you've
24 looked hither and yon for any possible evidence?

25 A. That's correct.

1 Q. And was there anything -- in other words,
2 your obligations and duties, did you follow them
3 that day?

4 A. Did I follow that --

5 Q. Yeah, did you do that that day?

6 A. Yes, I did, as far as I can recall.

7 Q. You certainly didn't want a bunch of
8 inmates coming in and tracking through what could be
9 evidence; right?

10 A. That's correct.

11 Q. And you certainly didn't want them in a
12 position where they could dispose of something after
13 your investigation had begun; correct?

14 A. Yes.

15 Q. And in terms of the investigation, did the
16 investigation include looking in the inmates'
17 individual cells for items that might be pertinent
18 or relevant to your investigation?

19 A. Yes, it would be.

20 Q. You wanted to see if there was clothing or
21 shoes that had blood on it or anything like that?

22 A. That's correct.

23 Q. You wanted to see if there were any
24 indications that there might be weapons pertinent to
25 your investigation?

1 A. That's correct.

2 Q. Because your responsibility is to
3 Castillo, but you've got two dead bodies on your
4 hands, don't you?

5 A. Yes, sir.

6 Q. So do you recall whether or not, when you
7 would go into a cell in order to search it to make
8 sure that you'd done your job, there was an inmate
9 who was sitting there on the bed?

10 A. I don't believe I went into any other
11 cells.

12 Q. Do you know whether or not the Department
13 of Corrections officials, guards, and their
14 investigative team had done that appropriate
15 investigation?

16 A. I don't know.

17 Q. Is there anything in your report to
18 indicate, you know, "We never did look in the
19 cells"?

20 A. No.

21 Q. And you understood, at least, that
22 Department of Corrections, after you talked to the
23 supervisors and familiarized yourself with their
24 regulations and rules in the department -- that they
25 also were capable of doing an investigation?

1 A. Yes.

2 Q. They have a team of people who are trained
3 to do an investigation even if it's internal to the
4 prison setting?

5 A. Yes.

6 Q. Is there anything in your report saying,
7 "Well, you know what, they just didn't do anything,
8 they didn't do diddly, and none of these cells were
9 checked"?

10 A. No.

11 Q. And is there anything that you have in
12 your report that indicates that either you or the
13 other officers that were there or the investigative
14 team for the Department of Corrections didn't do
15 everything possible to make sure that they had
16 secured whatever relevant evidence there was?

17 A. No, nothing in my report indicates that.

18 Q. And when you left there in the early
19 morning hours of March 27, were you satisfied that
20 you had done -- and the rest of your team had done
21 what was appropriate to further your investigation?

22 A. During that phase of it. But I knew there
23 were going to be some other things to pursue.

24 Q. I mean, you weren't done.

25 A. No.

1 Q. No doubt about that; right? But at least
2 that first obligation and duty that you and the
3 Department of Corrections had was to preserve the
4 scene and investigate what you could that had been
5 done?

6 A. Yes.

7 Q. And you had also -- as far as you know,
8 the inmates had been evaluated and checked to
9 determine if they had any injuries?

10 A. Yes.

11 Q. And if there were injuries, you understood
12 at least, just like Mr. Duncan said yesterday, we
13 were certainly taking a photograph of any injuries
14 that we saw on any of the inmates?

15 A. That's correct.

16 Q. Because when you went in there, you didn't
17 suspect Mr. Sandoval or Mr. Garcia or Mr. Pedraza,
18 the correction officers, of having been responsible
19 for this death; right?

20 A. That's correct.

21 Q. You had a finite group of individuals that
22 you focused on?

23 A. Yes.

24 Q. The inmates; right?

25 A. Yes.

1 Q. So each inmate would be evaluated and
2 determined if they had injuries. That determination
3 that -- would be documented; correct?

4 A. Yes.

5 Q. All right. Now, you were aware either
6 before your arrival or as soon as you arrived that
7 this was a ligature strangulation?

8 A. Yes.

9 Q. And so that somebody had put the noose or
10 a knot or a rope or a laundry bag around these
11 individuals' -- at least Mr. Castillo's neck, and
12 deprived him of oxygen until he died?

13 A. Yes.

14 Q. And you understood at least that in order
15 to do that, that would require someone using their
16 hands and a significant amount of force?

17 A. That's correct.

18 Q. And in terms of Mr. Castillo, you had no
19 reason to believe that he was infirm, weak, or
20 incapable; correct?

21 A. That's correct.

22 Q. If he was described by the medical
23 examiner as well-developed, you wouldn't have any
24 argument with that, would you?

25 A. No.

1 Q. Did you receive any information or see any
2 photographs that my client -- and I need to tell
3 you, because this is the first time I've told you, I
4 represent Joe Lawrence Gallegos. Okay?

5 A. Okay.

6 Q. You recognize the name, don't you?

7 A. Yes, I do.

8 Q. Did you receive any indication or any
9 evidence, either physical evidence or photographic
10 evidence, that he had any injuries to his hands?

11 A. Not that I recall.

12 Q. Now, we've had a little bit of testimony
13 about rigor mortis. You know what that is, don't
14 you?

15 A. Yes, I do.

16 Q. You knew what that was kind of before you
17 became a police officer?

18 A. Yes.

19 Q. And as a homicide detective, you've
20 become, unfortunately, more and more familiar with
21 what happens to a body after death?

22 A. Yes.

23 Q. And rigor mortis -- is it fair to say that
24 that's where the muscles stiffen and the individual
25 doesn't flop around, but actually is frozen in the

1 pose he was left in at the time he died?

2 A. Yes.

3 Q. And that was particularly true of
4 Mr. Castillo; correct?

5 A. That's -- I guess that would be something
6 I didn't see but I just understood.

7 Q. You've seen the photographs taken by
8 Mr. Duncan; right?

9 A. Yes.

10 Q. And they show his hands in an unusual
11 posture up by his chest; right?

12 A. Yes.

13 Q. And were you aware that when he was turned
14 over, in the video his hands are sort of locked in a
15 position, his arms and hands?

16 A. Yes.

17 Q. You've seen the video?

18 A. No.

19 Q. Okay. But that's what's going to happen
20 after death, sort of the process occurs; and that's
21 one of the processes; right?

22 A. Yes.

23 Q. And there's another thing, is that it's
24 got "mortis" after, which is a Latin phrase I think
25 for death, a livor mortis; correct?

1 A. Yes.

2 Q. And do you understand from your training
3 and your observations that livor mortis can occur
4 over a period of time after an individual dies?

5 A. Yes.

6 Q. You understand from your training and your
7 observations that basically what happens is the
8 blood vessels and capillaries in the body begin to
9 dissolve and the blood is no longer encapsulated by
10 our veins and arteries, but actually flows into the
11 tissues?

12 A. That's correct.

13 Q. And when it flows into the tissues, you
14 know, just like anything else, it flows with
15 gravitational pull?

16 A. Yes.

17 Q. So if I pour the water out, it's not going
18 to go up; it's going to go down?

19 A. That's correct.

20 Q. So the lowest part of the body, that's
21 where the blood will generally settle?

22 A. Yes.

23 Q. And Mr. Castillo, when you observed him,
24 had, you know, obvious signs of livor mortis on his
25 right side and on his belly or stomach or chest?

1 A. Yes. And I'm thinking about one of the
2 photos I observed yesterday showing that.

3 Q. In those photos it's pretty obvious;
4 correct?

5 A. Yes.

6 Q. Did you understand that the process of
7 livor mortis, you know, sort of once the blood has
8 escaped from the vessels and the capillaries and
9 settled, it stops, it's over; right? It all fills
10 up and that's it?

11 A. That's correct.

12 Q. Did you conduct interviews with all the
13 staff that you felt you needed to talk to to get as
14 much information as possible about what had happened
15 on March 25 through March 26?

16 A. Yes, I had.

17 Q. And did you also interview some of the
18 inmates that were there on the pod, that lived there
19 at that time?

20 A. Yes, I did.

21 Q. Now, as part of your investigation, did
22 you also attend the autopsy?

23 A. No.

24 Q. Did you have an opportunity to speak with
25 any of the forensic pathologists who conducted the

1 autopsy?

2 A. I don't recall speaking to them, no.

3 Q. Do you ever speak with Dr. Zumwalt?

4 A. Yes, I have.

5 Q. And did you speak to him particularly
6 about this case?

7 A. Oh, yes, I did.

8 Q. And just so the jury knows, we call them,
9 in Missouri, where I'm from, medical examiners.
10 What do you call the medical practitioner who does
11 the autopsies?

12 A. I call them a pathologist.

13 Q. Okay. So you have worked with
14 pathologists in the past?

15 A. Yes.

16 Q. You have worked with Dr. Zumwalt in the
17 past?

18 A. Yes.

19 Q. You have come to respect and rely on his
20 findings?

21 A. Yes.

22 Q. And one of the things you wanted to find
23 out from Dr. Zumwalt is: What can you tell me about
24 when this individual may die from the scientific
25 facts that you can develop during the autopsy?

1 A. Yes.

2 Q. And some of the -- you know, in an
3 autopsy -- have you ever seen an autopsy?

4 A. Yes, I have.

5 Q. And they start with an initial -- the
6 evaluation and examination of the body?

7 A. Yes.

8 Q. They're looking for any injuries,
9 lacerations, bruises, anything?

10 A. Yes.

11 Q. Those things that are apparent from the
12 outside of the body?

13 A. Yes.

14 Q. And then eventually they end up examining
15 the internal organs?

16 A. That's correct.

17 Q. And did you talk with Dr. Zumwalt about
18 his observations and evaluations as to -- or his
19 observations as to this particular body?

20 A. Yes, I did.

21 Q. And had you -- prior to this, when you had
22 done your interview of Mr. Garcia and Mr. Sandoval,
23 did they tell you anything about their observations
24 during the course of their roving through this pod?

25 A. Yes, they did.

1 Q. Initially they told you that they had
2 evaluated and examined the individuals in the
3 particular cell, especially Mr. Castillo; correct?

4 MR. CASTELLANO: Objection, calls for
5 hearsay.

6 THE COURT: I think it is. Sustained.
7 BY MR. SINDEL:

8 Q. Would it be fair to say when you walked
9 out of that prison that night or the early morning
10 hours of the 27th, you had in your head, at least,
11 some indication from Sandoval, who was one of the
12 rovers, and from Garcia, who was other rover, what
13 they said they had observed?

14 A. Yes, I did.

15 Q. And then after you talked to Dr. Zumwalt,
16 did you feel that it was absolutely necessary that
17 you interview these guys again?

18 A. Yes, I did.

19 Q. And when you went to interview them again,
20 did you tell them certain things that Dr. Zumwalt
21 had related to you?

22 A. Eventually, during the second interviews,
23 I did.

24 Q. And that's because you wanted to confront
25 them about what they had told you in the initial

1 interviews?

2 A. That's correct.

3 Q. You wanted to say something about, "Look,
4 the scientific evidence doesn't hold up with what
5 you initially told me"?

6 MR. CASTELLANO: Objection, calls for
7 hearsay.

8 Q. That's a close one.

9 THE COURT: Overruled.

10 Q. Right?

11 A. Yes.

12 Q. That's what you confronted them with?

13 A. Yes.

14 Q. "This is what you told me, and that
15 doesn't make sense if the science is accurate"?

16 A. That's correct.

17 Q. Did they change, then, what they told you?

18 A. Yes, they did.

19 Q. And what you learned -- did you learn
20 anything to indicate to you that Mr. Garcia and
21 Mr. Sandoval had not appropriately checked and
22 determined whether Mr. Castillo was alive during the
23 late evening hours of March 25?

24 MR. CASTELLANO: Objection, calls for
25 hearsay.

1 THE COURT: I think this is just a yes/no
2 answer, and probably anything else may be
3 problematical. But you can answer this question.

4 A. Yes.

5 BY MR. SINDEL:

6 Q. And that would be for both of the
7 correctional officers?

8 A. Yes.

9 Q. And that would cover the entire time from
10 lockdown at 10:30 until discovery of the body at
11 somewhere around 9:00?

12 A. Yes.

13 Q. Did you feel that after you learned --
14 concerning the discrepancies between their first
15 interview and the second interview, that you had to
16 reevaluate the time of death?

17 A. Yes, I did.

18 Q. Did you believe that after obtaining all
19 this information, all this evidence, that you could
20 not determine whether or not the homicide had
21 occurred in the early morning hours of March 26 or
22 the late evening hours of March 25?

23 A. That's correct.

24 Q. You also talked to a gentleman we heard
25 from yesterday named Chris Barela. Do you remember

1 him? This isn't a test. I can tell you --

2 A. There was a Chris Barela with corrections
3 I talked to, yes.

4 Q. Let me just say, Chris Barela testified
5 yesterday that he was the guard who was the --

6 MR. CASTELLANO: Objection to referring to
7 another witness's testimony.

8 THE COURT: Let's not paraphrase in front
9 of him. It sort of circumvents the rule.

10 BY MR. SINDEL:

11 Q. If we heard testimony that Chris Barela
12 went into that cell at around 9:00 to determine if
13 Mr. Castillo was alive, would that be consistent
14 with what you learned during your investigation?

15 A. At 9:00 in the--

16 Q. March 26, 9:00 a.m.

17 A. And saw Mr. Castillo alive?

18 Q. No, dead.

19 A. Oh, dead? Yes, it would be.

20 Q. And at least in your investigation, do you
21 recall whether or not there was any indication that
22 Mr. Barela actually went into the cell, kicked the
23 mattress, and didn't get any response from
24 Mr. Castillo?

25 A. Nothing I firsthand observed, no.

1 Q. I didn't asked if you observed it. Did
2 you learn that?

3 A. Yes, I did.

4 Q. And did you also -- in part of your
5 investigation that occurred there on March 26 into
6 the wee hours of March 27 and later, did you also
7 talk to medical staff about what they'd observed and
8 seen?

9 A. Yes, I did.

10 Q. All those things you included in your
11 report?

12 A. Yes.

13 Q. It's important in your report to be as
14 accurate as possible.

15 A. Yes, it is.

16 Q. You know, because you've got a couple
17 things a report does. Number one, it preserves what
18 you were told or what you had seen; correct?

19 A. Yes.

20 Q. And sometimes in terms of that report,
21 you've got to come into a courtroom 17 years later
22 and answer questions by the prosecution; correct?

23 A. Yes.

24 Q. And you have to use that report to say,
25 you know, I've been through a whole lot in that 17

1 years. I've seen a lot of things. I have to
2 refresh my memory.

3 A. That's correct.

4 Q. And that's the way you can also adequately
5 answer the questions I ask you.

6 A. Yes.

7 Q. And that's what you've done here.

8 A. Tried to, yes.

9 Q. And I'm not asking you to memorize it, but
10 you reviewed it before testifying.

11 A. Yes, I did.

12 Q. Were you aware of a laundry bag that was
13 recovered after the autopsy from Mr. Castillo,
14 around Mr. Castillo's neck?

15 A. Yes.

16 MR. SINDEL: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MR. SINDEL:

19 Q. I'm going to show you what's Government's
20 Exhibit 120. Is this exhibit consistent with the
21 laundry bag that was recovered from around the neck
22 of Mr. Castillo? And I know you have to look at a
23 bunch of stuff on it. You can believe me or not.
24 We've heard testimony.

25 A. Yes, it is.

1 Q. And is there a tag on that laundry bag
2 with a name on it?

3 A. Yes, there is, appears to be.

4 Q. And it's sort of written there in black
5 magic marker or something?

6 A. Yes.

7 Q. What's the name on that laundry bag? It's
8 hard to see it.

9 A. I'm seeing the last part of a name that's
10 consistent with Pancho, and then Castillo.

11 Q. And you know, if I pulled it out of there,
12 you could open it completely up and see every single
13 letter. We won't do that unless there is some
14 dispute.

15 Did you understand that Mr. Castillo's
16 nickname was Pancho?

17 A. Yes, I did.

18 MR. SINDEL: Your Honor, I'd like to pull
19 up, for the jury and the witness to observe,
20 Government's Exhibit 152. I think we have an
21 understanding with Mr. Castellano that there is no
22 objection to the admission of that photograph.

23 THE COURT: Mr. Castellano, no objection?

24 MR. CASTELLANO: Yes, I haven't seen it,
25 but if it's as represented, there is no objection.

1 THE COURT: Any objection from any other
2 defendant?

3 MR. SINDEL: I want to make sure I haven't
4 done something -- you know, pop up something that's
5 not appropriate.

6 MR. CASTELLANO: I haven't seen it.

7 THE COURT: Government's Exhibit 152 will
8 be admitted into evidence.

9 (Government Exhibit 152 admitted.)

10 MR. CASTELLANO: No objection, Your Honor.

11 THE COURT: All right. 152 will be
12 admitted into evidence.

13 MR. SINDEL: May we publish for the jury
14 Government's Exhibit 152?

15 THE COURT: I think it's already up.

16 BY MR. SINDEL:

17 Q. There it is. Does that seem to be
18 consistent with the bag that I've shown you in
19 Government's Exhibit 120?

20 A. Yes, it does.

21 Q. And the tag that you had referred to -- is
22 that it right there?

23 A. Yes.

24 Q. And that clearly says Pancho and Castillo?

25 A. Yes.

1 Q. And did you understand that the inmates
2 would keep their laundry bags in their cells for
3 collection of laundry and to be able to do laundry
4 on a regular basis?

5 A. That was my understanding, yes.

6 Q. And did you understand that each
7 individual inmate would have an individual laundry
8 bag? In other words, each individual got their own
9 laundry bag?

10 A. Yes.

11 Q. Would it be apparent to you through your
12 investigation that somebody took that laundry bag
13 that was in Mr. Castillo's cell and wrapped it
14 around his neck until he was dead?

15 A. Yes.

16 Q. During the course of your investigation,
17 did you also learn or obtain information concerning
18 inmates and their assignments to certain work
19 details?

20 A. Some of them I believe I did, yes.

21 Q. Was there information concerning kitchen
22 details?

23 A. Yes.

24 Q. Were you ever in the service, Army, Navy?

25 A. Oh, no.

1 Q. Okay. But you knew from your observations
2 that the kitchen detail would go in to start the
3 process of making breakfast for the rest of the
4 institution?

5 A. Yes.

6 Q. They might go before breakfast because
7 they needed to do that as their work
8 responsibilities?

9 A. Yes.

10 Q. Now, there was a piece of paper that was
11 recovered from the trash can and photographed by
12 Mr. Duncan that was, I think, torn in four pieces,
13 had some names on it. Did you ever determine if
14 there was any significance to that?

15 A. No, I did not.

16 Q. Did you ever take any item of clothing
17 from the -- or items of clothing from the inmates
18 there in that particular pod or unit?

19 A. Not on that day. But later on,
20 Corrections relinquished several articles of
21 clothing to me from inmates within that pod.

22 Q. And did you understand that these were
23 articles of clothing that they thought might have
24 some suspicious stains, marks, or biological fluids?

25 A. Yes, I did.

1 Q. And then, you know, because of what's
2 happened during the course of our careers, there has
3 been a significant advancement in what science can
4 do with biological material?

5 A. Yes.

6 Q. You know, whereas at one time they could
7 type it as the blood, now they can say who it came
8 from?

9 A. That's correct.

10 Q. And do you recall whether or not at any
11 time there was a shirt that was taken from Joe
12 Gallegos that was subsequently reviewed by the
13 laboratory or examined by the laboratory?

14 A. Could have been. There were several
15 articles. I don't recall specifically what, from
16 who.

17 Q. I don't know if your pages are like mine,
18 okay, so I don't want to -- Bates 138.

19 MR. SINDEL: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. SINDEL:

22 Q. Like I said, the way they do these things
23 when they give us all this paper, we've got 70
24 thousand pages or more, they do what they call a
25 Bates No. Are you familiar with a Bates No.?

1 A. No, I'm not.

2 Q. It's a numbering system that they use and
3 it appears there at the bottom and that's Bates No.
4 138; correct?

5 A. Yes.

6 Q. It says at the top -- there is a little
7 hole there, but "New Mexico supplemental report" and
8 that's page 7 of 9?

9 A. Yes.

10 Q. And I don't want you to have to look
11 through your massive notebook. I'll put that up
12 myself. Is there any indication here in this
13 paragraph -- can you read that to yourself, please?

14 A. Okay.

15 Q. Does that paragraph indicate that certain
16 items of clothing was taken from Mr. Gallegos and
17 preserved for you in evidence?

18 A. Yes, it was.

19 Q. And the reason for that is, well, there
20 might be biological material or something that links
21 him to this homicide; right?

22 A. That's what we wanted to check.

23 Q. And you take that to the laboratory to
24 say, "Hey, guys, run what you can on this, get us
25 what you can, and see if there is anything of

1 evidentiary value"?

2 A. Yes.

3 Q. Did you feel that during the course of
4 this timeframe you had done a fairly thoroughly
5 investigation?

6 A. As far as I could determine, I did.

7 Q. When you want to conclude your
8 investigation and you want to present it to the
9 prosecuting authorities to make an assessment or
10 determination as to whether they want to pursue it
11 in court, are there certain responsibilities and
12 requirements that you have, and what paperwork you
13 have to fill out, things like that?

14 A. Yes.

15 Q. And did that include requesting for them
16 to recite and then to go to a Court to get a warrant
17 for someone's arrest?

18 A. Yes.

19 Q. And does that also include preparing
20 affidavits concerning your request for a warrant?

21 A. Yes, it does.

22 Q. The purpose of that is to provide the
23 Court with -- or the prosecutor first; right? You
24 take it to the prosecutor first?

25 A. Yes.

1 Q. It's up to the prosecutor whether to take
2 it to court or not?

3 A. Yes, that's correct.

4 Q. And then you provide them with an
5 affidavit that says, "Look, you know, I'm swearing
6 to tell the truth. This is the truth. This is what
7 I found out during my investigation."

8 A. That's correct.

9 Q. And then you also give them a statement of
10 facts in support of a criminal complaint?

11 A. Yes.

12 Q. And do you understand that a criminal
13 complaint is the very first step in the process of
14 bringing a case to court against a person or
15 persons?

16 A. Yes.

17 Q. And did you, in fact, take to the
18 prosecuting attorney for Dona Ana County here in the
19 state of New Mexico an affidavit for an arrest
20 warrant for Angel DeLeon?

21 A. Yes, I did.

22 Q. And did you -- in part, had you focused on
23 Mr. DeLeon because of what you had, the DNA report
24 that you had received from the laboratories?

25 A. Yes.

1 Q. And after you took that to them -- let me
2 start again. I think at one point in time you had
3 prepared a PowerPoint or something to that effect on
4 this case; is that true?

5 A. Yes, that is.

6 Q. And did you use that as a tool for
7 instructing other officers, or was it something used
8 in the presentation before the district attorney, or
9 what was it?

10 A. I think I created it to use as a
11 presentation to the prosecuting office, district
12 attorney, to kind of bring the main points of the
13 investigation together.

14 MR. SINDEL: May I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 BY MR. SINDEL:

18 Q. I wanted to show you an unmarked exhibit.
19 It's a whole bunch of pages; right? Is that the
20 PowerPoint presentation that you prepared in
21 connection with the investigation of the death of
22 Frank Castillo? You can look at it.

23 A. Yes, if you don't mind.

24 Q. No, no, please.

25 A. The first page looks like it, yes.

1 Q. There is nothing there about me, is there?

2 A. Not that I put there, no. Yes, it would
3 be it.

4 Q. So that's part of your presentation. And
5 I'm going to show you another unmarked exhibit,
6 which is -- the first page is labeled. Would you
7 look through that briefly?

8 And is that consistent with some -- I
9 mean, you didn't obviously read it, but is that the
10 materials you presented to the -- the district
11 attorney? Is that what you call them here?

12 A. Yes.

13 Q. Is that what you prepared to present to
14 the district attorney on Mr. DeLeon?

15 A. Yes, it is.

16 Q. I'll show you Exhibit AO. Is that the
17 document that you previously referred to that was
18 taken to the district attorney concerning the
19 possibility of pursuing a prosecution against
20 Mr. DeLeon?

21 A. Yes, it is.

22 Q. And I'm going to now show you what's been
23 marked as Defendants' Exhibit AP. And is that the
24 PowerPoint demonstration that you had previously
25 referred to?

1 A. Yes.

2 MR. SINDEL: Your Honor, we would offer
3 into evidence Defendants' Exhibit AO and AP.

4 THE COURT: Any objection, Mr. Castellano?

5 MR. CASTELLANO: Yes, Your Honor. I
6 object to hearsay, and I think we need to approach
7 the bench.

8 THE COURT: I think they probably would
9 be, so I will not admit AO and AP.

10 MR. SINDEL: You will not admit them?

11 THE COURT: Did you want to approach,
12 Mr. Castellano?

13 MR. CASTELLANO: Not based on that answer,
14 Your Honor.

15 THE COURT: You can talk me out of it.

16 MR. CASTELLANO: I'm good.

17 MR. SINDEL: Well, I could try to talk you
18 out of it. But I did approach Mr. Castellano to try
19 and be, for the last time, gracious; so he knew what
20 I was doing.

21 I think that's all I have.

22 THE COURT: Thank you, Mr. Sindel.

23 MR. SINDEL: Thank you so much for bearing
24 with me. I appreciate it. Safe travels, sir.

25 THE WITNESS: You too.

1 THE COURT: All right. Any other
2 defendants? Mr. Castle?

3 CROSS-EXAMINATION

4 BY MR. CASTLE:

5 Q. Good morning, Agent Rhoades.

6 A. Good morning.

7 Q. I think earlier you testified that you
8 were the lead investigator for the Castillo
9 investigation; is that right?

10 A. Yes, it is.

11 Q. But in your investigation, would I be
12 correct in stating that it kind of bled over into
13 also the investigation of the death of Mr. Garcia in
14 some ways?

15 A. In some ways, yes.

16 Q. So for example, if you're interviewing a
17 witness, you wouldn't just ask him about the one
18 homicide; you would talk about both?

19 A. I think for me, when I interviewed, I
20 primarily focused on Castillo.

21 Q. When you do an investigation like this, do
22 you keep an open mind about what possibly could
23 happen?

24 A. Yes.

25 Q. We've heard a phrase I think recently in

1 modern culture about following the evidence wherever
2 it leads. Are you familiar with that phrase?

3 A. Yes, I am.

4 Q. Is that kind of the approach that you take
5 when you're investigating a case like this?

6 A. Yes.

7 Q. Question everything? Would that be
8 another tactic?

9 A. Yes.

10 Q. Now, when you first began your
11 investigation, was one of the possible theories that
12 you were looking into that perhaps Mr. Castillo and
13 Garza -- well, let me go back. Were they both -- in
14 your investigation, did you determine both were part
15 of a prison gang called the SNM?

16 A. Yes.

17 Q. And was one theory you looked at the
18 possibility that maybe a rival prison gang killed
19 these two inmates?

20 A. I think we're looking more at, from the
21 same gang, from what I understood was, the SNM Gang
22 was primarily what was housed at Southern.

23 Q. So -- and there wasn't any gang warfare
24 that happened after; is that right?

25 A. Not to my knowledge, no.

1 Q. Because right after the murders, if,
2 perhaps, the Los Carnales Gang went to war against
3 the SNM, that might indicate that there was some
4 kind of connection in that?

5 A. It could have, yes.

6 Q. But none of that happened?

7 A. No.

8 Q. Now, in your investigation in the early
9 days and perhaps even month after the murders, did
10 you develop several leads that an inmate by the name
11 of Leroy Lucero had called the hits?

12 MR. CASTELLANO: Objection, calls for
13 hearsay.

14 MR. CASTLE: Your Honor, it's admissible
15 on a number of grounds, if the Court would like me
16 to address this.

17 THE COURT: Well, you had better approach,
18 if you've got some grounds.

19 (The following proceedings were held at
20 the bench.)

21 THE COURT: Do you have any leads besides
22 these people telling him? Do you have any
23 nonhearsay leads?

24 MR. CASTLE: I have -- well, I don't call
25 them hearsay leads, but if that's what the Court is

1 calling them, I'll adopt that term. The Tenth
2 Circuit case, United States v. Freeman, 816 F.2d
3 558, a 1987 case. The Court found that in that case
4 the Government introduced statements made by local
5 police officers and their confidential informants to
6 the investigating agent in the case. In that case
7 the defendants argued the statements were hearsay
8 and should not have been admitted. The Tenth
9 Circuit determined the statements were properly
10 admitted for a nonhearsay use.

11 THE COURT: Well, I think if you're trying
12 to get in his state of mind, I think I can give a
13 limiting instruction, because how he did his
14 investigation -- I think I would have to give a
15 limiting instruction because any of the leads that
16 he's relying on can't be relied upon by the jury for
17 the truth, but they just indicate how Mr. Rhoades
18 went about his investigation.

19 MR. CASTLE: For the record, I would ask
20 to also offer them for the truth of the matter. I
21 did a brief, and I'm not sure what the number is,
22 concerning the right to present a defense in this
23 case. The Court has heard a lot of evidence that a
24 lot of these leads ended up being lost by the
25 Government or by the police and perhaps the FBI.

1 And so I want to pursue that aspect of it as well.
2 I'm getting the impression I'm going to lose on that
3 argument.

4 THE COURT: Yeah, I read the brief.
5 Probably you're asking for me to relax the rules of
6 evidence in that brief, and I won't. But I will
7 allow him to explain how he does the investigation.
8 So I'll --

9 MR. CASTLE: Judge, just one last thing.
10 In Kyles versus Whitley, the Supreme Court case, the
11 Supreme Court said that it was proper for the
12 defense to discredit the police method employed in
13 assembling the case and it cast the investigation as
14 shoddy, and in that case it was about bringing out
15 information concerning an informant that possibly
16 could have been an alternate suspect. And there is
17 other case law I can rely on, but I can probably
18 make that record later.

19 THE COURT: It will certainly discredit
20 him. I'm not going to preclude that approach to
21 him, so --

22 MR. CASTLE: Okay.

23 THE COURT: I'll let you do that as
24 robustly as the rules of evidence allow. I'll allow
25 the question, because I think it is going to be

1 relying on perhaps some things that were told him.
2 But I will instruct the jury not to rely upon
3 anything that was told him for the truth of the
4 matter.

5 MR. CASTELLANO: The problem with the line
6 of questioning is that it will open the door to the
7 other defendants in this case or, for example,
8 yesterday I asked if he had suspects as a result of
9 his investigation. That was objected to, I think,
10 as hearsay and irrelevant. But that is the same
11 line of questioning. It also opened the door to
12 Billy Garcia's name coming out because it's another
13 name that was given to him as a lead. So I think
14 once he goes there, other leads that he took, the
15 defendants' names in this courtroom. So I just --
16 once that happens, if we're talking about his
17 investigation, it's going to lead to these
18 defendants' names.

19 MR. CASTLE: Well, I think that's because
20 if that is a Confrontation Clause issue, then, Your
21 Honor, it's not present -- the difference, the
22 defense is presenting evidence regarding the
23 Government's leads.

24 THE COURT: Well, I did sustain the
25 objection yesterday when the defendants said did he

1 have specifics. How do I square what you're trying
2 to do here with what I did yesterday?

3 MR. CASTLE: Well, I think there is a
4 Confrontation Clause issue, but also they were not
5 offering it for a nonhearsay purpose. And so I
6 think the case law is that it's not being offered
7 for a nonhearsay purpose, impeaching that is not,
8 you know, an approved method. But I am going to
9 indicate to him that one of his possible leads was
10 that Billy Garcia ordered it. I'm not going to hide
11 from that fact at all.

12 THE COURT: Let me do this. I think that
13 this particular question -- we'll take them one at a
14 time. This particular question is acceptable with a
15 limiting instruction to the jury, so I'll give it
16 now and I'll just take them one at a time.

17 MR. CASTLE: Thank you.

18 THE COURT: We're going to go only a few
19 more minutes.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: All right. I'm going to allow
23 this question. And Mr. Rhoades may have gotten some
24 of this information from other people that caused
25 him to -- in fact, he began to focus on Mr. Lucero.

1 You can't consider anything that was told him for
2 the truth of the matter. You can only consider it
3 for the purpose of helping you understand why
4 Mr. Rhoades did his investigation. So anything that
5 was said to him that may be implied or implicit in
6 this question. You can't consider it for the truth
7 of the matter. You can only consider it to
8 understand why Mr. Rhoades did what he did.

9 All right. Do you need the question
10 again?

11 THE WITNESS: Yes, please.

12 THE COURT: The question is: In your
13 investigation in the early days and perhaps even
14 months after the murders, did you develop several
15 leads that an inmate by the name of Leroy Lucero had
16 called the hits? That's a yes/no question at this
17 point.

18 A. Ah --

19 BY MR. CASTLE:

20 Q. Would you prefer if I showed you the
21 documents?

22 A. Yes. The name is not familiar to me right
23 now.

24 MR. CASTLE: May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 BY MR. CASTLE:

3 Q. Agent Rhoades, before we go into these
4 documents, were you working with the Department of
5 Corrections in your investigation?

6 A. Yes, I was.

7 Q. And are there individuals that are part of
8 the security threat intelligence group, the STIU,
9 that would work and provide information to you all?

10 A. Yes.

11 Q. And the kinds of information generally,
12 some of it would be from informants they've
13 developed; is that right?

14 A. Yes.

15 Q. And some of it might be a tip they got?

16 A. Yes.

17 Q. Or rumors?

18 A. Yes.

19 Q. Or maybe a kite that was sent, that they
20 received?

21 A. Yes.

22 Q. Now, I want to bring to your attention
23 certain documents. First of all, looking at page
24 131, do you recognize that as a cover sheet of your
25 investigation?

1 A. Yes, I do.

2 Q. And I want to go to the third page. I
3 want to take a look at that. I'm going to show you
4 a series of documents.

5 A. Okay.

6 Q. I'm also showing you a document which is
7 dated August 13, 2001. I take it that was -- your
8 investigation was still going on in 2001?

9 A. Yes, it was.

10 Q. If I could have you look at that and just
11 look at that first paragraph there. Don't read it
12 out loud. Just read it to yourself.

13 And I'll show you page 12 of a report
14 dated September 25, 2001, and I'll just go to the
15 second page and the second-to-the-last paragraph.
16 If you could read that to yourself.

17 THE COURT: Mr. Castle, could he look at
18 these maybe during the break?

19 MR. CASTLE: That would be fine.

20 THE COURT: Why don't we take our
21 15-minute break and come back at 12:00, and work
22 through the lunch hour and take a late lunch.

23 All right. We'll be in recess for about
24 15 minutes.

25 (The jury left the courtroom.)

1 THE COURT: All right. We'll be in recess
2 for about 15 minutes.

3 (The Court stood in recess.)

4 THE COURT: All right. I think we've got
5 everybody in the courtroom. All the defendants, a
6 lawyer for each defendant. Is there anything we
7 need to discuss before we bring the jury in? From
8 the Government?

9 MR. CASTELLANO: No, Your Honor.

10 THE COURT: How about from the defendants?
11 Any issues we need to discuss?

12 MS. HARBOUR-VALDEZ: No, Your Honor.

13 (The jury entered the courtroom.)

14 THE COURT: All right. Everyone be
15 seated.

16 All right, Mr. Rhoades, I'll remind you
17 that you're still under oath.

18 Mr. Castle, if you wish to continue your
19 cross-examination, you may.

20 MR. CASTLE: Thank you, Your Honor.

21 BY MR. CASTLE:

22 Q. Agent Rhoades, I think when we last left
23 off, I was showing you a page. Will you take my
24 word for it, it's page 1278? Apparently it cut off
25 on the bottom of the page. Did you see this

1 document?

2 A. Yes.

3 Q. Did you have an opportunity to review
4 that?

5 A. Yes.

6 Q. Also showing you page 27899, April 10th,
7 2001, did you have an opportunity to review that
8 during the break?

9 A. Yes, sir.

10 Q. The next one being page 19135 of
11 discovery, this is actually a report prior to the
12 homicides, February 23, 2001. Did you have an
13 opportunity to look at that?

14 A. Yes, I did.

15 Q. And then the final one -- no, I guess it's
16 not the final. 19126, a report dated July 11, 2001.
17 Do you see that report?

18 A. Yes.

19 Q. And is that a Department of Corrections
20 report?

21 A. Yes, it is.

22 Q. Were you able to look at the third page of
23 that --

24 A. Yes.

25 Q. -- concerning Mr. Lucero? And the final

1 one is page 45007. Is that, again, a report from
2 the Department of Corrections?

3 A. Yes, it is.

4 Q. That's a report dated March 28, 2001,
5 which is just two or three days after the murders?

6 A. Yes.

7 Q. You had an opportunity to review that?

8 A. Yes.

9 Q. Now, after reviewing those reports, does
10 it refresh your memory as to whether there were some
11 leads that indicated that Leroy Lucero may have
12 called the hits? In other words, ordered the
13 murders, orchestrated the murders?

14 A. Yes. What was documented in my report was
15 information I'd received from Corrections. Several
16 of those documents I don't believe I've seen.

17 Q. Would those have been the FBI reports?

18 A. And some of Corrections, yes.

19 Q. So if you didn't see them, is that because
20 they didn't give them to you?

21 A. That would be correct, yes.

22 Q. Is that concerning to some extent?

23 A. Well, I felt like at the time that they
24 had their side of it going. In my position as a law
25 enforcement investigator, I'm not going to have the

1 same level of interaction with the inmates or
2 Corrections, nor do I have the knowledge. So I knew
3 that they were conducting investigations down the
4 line that I would hope that we'd get back together
5 on at some point.

6 Q. So the Corrections Department might have,
7 let's say, developed some informants and sources of
8 information within the prison that you wouldn't be
9 able to do, you know, in your capacity; is that
10 right?

11 A. That's correct.

12 Q. And so did you rely upon them to conduct
13 that part of the investigation and give you the
14 information after they collected it?

15 A. Yes.

16 Q. When they developed informants that had
17 information, let's say, for example, on Mr. Lucero,
18 what did you do or what were the instructions to the
19 Department of Corrections to do to make sure that
20 the name of that informant was preserved for the
21 future in case people wanted to interview them?

22 A. I'm not sure what their procedure was.
23 And I know that several I could not interview. They
24 wouldn't talk to me or anything. So I was pretty
25 much letting them run their course without

1 interfering, with the expectation at some point all
2 that information would be brought in and kind of
3 hashed out.

4 Q. Let's go back to these pages of materials.
5 The one at page 133. Without going into what was
6 said about Mr. Lucero, can you tell us whether you
7 received that information during your investigation?

8 A. Yes, and this is my report on it.

9 Q. And do you know who that -- that's
10 concerning some kind of informant; right? A source?

11 A. Yes.

12 Q. An inmate source?

13 A. Yes.

14 Q. What was done to -- well, do you know the
15 name of that source?

16 A. The name of the source? No, I don't.

17 Q. Did you ever interview that source?

18 A. No, not to my knowledge.

19 Q. And do you know whether the name of that
20 person was ever kept in your records so that that
21 person could be located and found later on?

22 A. Not to my knowledge. I don't recall ever
23 having that source's identity revealed to me.

24 Q. Would it be important to keep the name of
25 that person for the future?

1 A. Yes, it would be.

2 Q. There has been some talk about cold cases.
3 Sometimes cases don't get solved for 10, 15, 20
4 years, or maybe not at all; right?

5 A. That's correct, yes.

6 Q. So it's important to document the file
7 with critical information concerning people who
8 might know what happened? Would that be fair?

9 A. Yes.

10 Q. And that's so that perhaps if a case is
11 ever prosecuted 15, 20 years down the line, people
12 can find that person and then bring them to court to
13 testify in front of a jury?

14 A. Yes.

15 Q. Now, this particular --

16 MR. CASTLE: I think, Your Honor, that the
17 instruction is probably appropriate at this time
18 given the Court's ruling. I'm offering these next
19 statements not for --

20 THE COURT: Why don't you give me a
21 question, and then I'll know a little bit more of
22 what --

23 BY MR. CASTLE:

24 Q. Did the source of information in this
25 particular document indicate that Leroy Lucero

1 called the hits on inmates Castillo and Garza?

2 THE COURT: Well --

3 MR. CASTELLANO: Object to hearsay.

4 THE COURT: Yeah, I think that question is
5 just being offered for the truth. I think you've
6 already asked that question earlier. That was
7 proper and I gave you the instruction.

8 MR. CASTLE: Well, Your Honor, the only
9 thing I would argue is that the degree of detail
10 this person gave would cause a greater need for law
11 enforcement to retain their identity, and so it goes
12 to, you know, if law enforcement didn't follow a
13 lead that's basically --

14 THE COURT: Well, you can ask the next
15 question. I think you've got a next question.
16 Let's try that one, the one that you had.

17 BY MR. CASTLE:

18 Q. This inmate, without saying what exactly
19 they said, did they give details on the exact number
20 of assailants that were involved in each hit and how
21 many people knew of the hit?

22 A. Yes, they did.

23 Q. But as of your knowledge, that informant
24 or that person is now -- no one knows who that is
25 that gave that information?

1 A. Well, I never got the name, nor did I push
2 for it at that time, because I realized that there
3 is a lot of -- when you're dealing with confidential
4 informants, sources, there is a lot of
5 confidentiality and trust that you have to build,
6 and I didn't want to breach that with the
7 Corrections, so I just left it at the source,
8 expecting at some point we would get back together
9 and bring all this information, and then they may
10 have kept it in their files. Had we had that
11 meeting and I got that information, then I certainly
12 would have kept it in my files.

13 MR. CASTLE: Would the Government be
14 willing to stipulate that the identity of that
15 informant is not known?

16 MR. CASTELLANO: I don't know which one
17 you're talking about. So we'd have to sit down --

18 MR. CASTLE: DeLeon 133.

19 MR. CASTELLANO: I can't say at this
20 point, Your Honor. If they point it out to me from
21 the record, we will stipulate.

22 MR. CASTLE: I'll point it out and perhaps
23 we can do it later at the trial, Your Honor.

24 THE COURT: All right.

25

1 BY MR. CASTLE:

2 Q. Let me show you 19128. This is a State of
3 New Mexico Department of Corrections report; is that
4 right?

5 A. Yes.

6 Q. July 11, 2001?

7 A. Yes.

8 Q. And it's concerning confidential sources
9 on the murder of inmates Frank Castillo and Rolando
10 Garza; is that right?

11 A. Yes.

12 Q. I want to go to page 19128. Is there a
13 person that they gave the number of source 13 -- is
14 that the number that's been given to this
15 individual?

16 A. Yes.

17 Q. And in your work, they'll often -- when
18 they have an informant, they use some kind of
19 alphanumeric designation for that informant without
20 their actual name in a report; is that right?

21 A. Yes, it is.

22 Q. That's so that it doesn't accidentally get
23 distributed and someone could be put at risk.

24 A. That's correct.

25 Q. But they're supposed to keep a separate

1 log of informants, what they -- not what the
2 alphanumeric designation is with the actual names of
3 the informant; is that right?

4 A. I'm not sure how the corrections agency or
5 other agencies handle their confidential informants
6 or sources. But what you're saying how it's done is
7 similar to how we handle it.

8 Q. So that's the way that the New Mexico
9 State Police would handle it?

10 A. Yes.

11 Q. And other law enforcement agencies?

12 A. To my knowledge, the ones I know firsthand
13 about do similar practices, yes.

14 Q. Again, in regards to this inmate, is this
15 someone who, without getting into the details, is
16 providing information concerning Mr. Lucero and
17 another inmate and activities that they were engaged
18 in right before the murders took place?

19 A. Yes, it does.

20 Q. And is that information -- I take it it's
21 something that would be important in your
22 investigation; is that right?

23 A. Yes.

24 Q. And did you receive this report from the
25 Department of Corrections?

1 A. I don't recall seeing it before, no.

2 Q. Is that something you would have wanted to
3 have in your investigation?

4 A. I would like to collect everything
5 relating to my investigation. In a case like this,
6 it's kind of -- I don't want to say fragmented, but
7 branching out, such as Corrections following their
8 part where I can't go.

9 Q. Sure.

10 A. So I realize that's going to happen, and
11 documentation is going to be created along that
12 route. Hopefully at some point I would like to get
13 copies of that down the line somewhere.

14 Q. I think you had talked about in 2007 there
15 being an interview you conducted with Leonard Lujan.

16 A. Yes.

17 Q. And without going into the contents of
18 that, I've read it and there's no questions about
19 Leroy Lucero. Is that perhaps because you received
20 some of these reports from the Department of
21 Corrections and the FBI?

22 A. Yes, I received information regarding him,
23 which is documented in my report. But at that time
24 there was no other substance, if you will, to
25 follow-up on, so...

1 Q. I want to show you page 19135. It's a
2 State of New Mexico Corrections report dated
3 November 24, 2000. Without going into the contents
4 of this, this is information that came in, I think,
5 actually February 23, 2001; is that right?

6 A. Yes.

7 Q. So that would have been less than a month
8 before the murders?

9 A. Yes.

10 Q. And without going into all the details,
11 does it go over essentially who was the, you know,
12 perhaps head of the SNM at that point in time at
13 that facility?

14 A. Yes, it does.

15 Q. Did you get that report from the
16 Department of Corrections? Did they give that to
17 you, that you recall?

18 A. Not that I recall.

19 Q. In fact, in the discovery in this case --
20 when we say discovery, it went to all the lawyers;
21 right?

22 A. Yes.

23 Q. When you looked at your file, were those
24 all really low numbers? In other words, you gave
25 them your entire file, right, and they copied it?

1 A. Yes, I believe I scanned my file into a
2 PDF file and presented it to the U.S. Attorney that
3 way.

4 Q. And when you looked at that, those are all
5 low numbers under, say, 2000; is that right?

6 A. You're referring to the year?

7 Q. No, the page numbers.

8 A. Oh, could be. Yes.

9 Q. So we're looking at 19135, that's probably
10 not from your files, would that be fair to say?

11 A. I think so. I don't recall that being in
12 the file.

13 Q. You've given that file to the Government.
14 So if it was in your file, they'd be able to show
15 you a page from that. Would that be fair to say?

16 A. Yes.

17 Q. Here's one 27899, an FBI report, April 10,
18 2001. That would have been a little over two weeks
19 from the day of the murders?

20 A. Yes.

21 Q. And with regard to this report, without
22 going into the details, it's concerning Mr. Lucero?

23 A. Yes, it is.

24 Q. And it also actually talks about
25 Mr. Garcia, too, Billy Garcia. Is that right?

1 A. Yes, it does.

2 Q. So in the early going of your
3 investigation there were also tips that were coming
4 in pointing at Billy Garcia; is that right?

5 A. Yes.

6 Q. And there were tips on various different
7 individuals?

8 A. Yes, that's correct.

9 Q. Some who are not here today?

10 A. Yes.

11 Q. Or that weren't even charged with these
12 offenses?

13 A. Yes.

14 Q. Without going through every report, would
15 I be correct that the only one that was part of your
16 file is this first report that I gave? Do you want
17 to take a look at them again?

18 A. Which is my supplement, and to my
19 knowledge, there may be one or two of these others
20 inside my report. This case was reassigned from me
21 to another investigator in 2003, so some things may
22 have been added after that.

23 Q. Okay. Thank you. Mr. Sindel showed you a
24 PowerPoint. Do you recall that?

25 A. Yes.

1 Q. I think you said that that was something
2 you put together for presentation to some
3 prosecutors; do you recall that?

4 A. Yes, it was.

5 Q. And it included information concerning
6 your 2007 interview with Mr. Lujan?

7 A. Yes.

8 Q. Which prosecutors did you present that to?

9 A. That was prepared to present it to -- if I
10 remember correctly, we went up to Albuquerque to do
11 an overview to the FBI, U.S. Attorney's Office. The
12 Third Judicial District Attorney from here in Las
13 Cruces attended and there was a roomful of a lot of
14 people. Those are the ones that I remember that
15 attended.

16 Q. Was it just the Castillo murder that was
17 presented, or was it also the Garza murder?

18 A. The Garza. Felipe Gonzalez went up with
19 me, as well.

20 Q. Did he do a similar PowerPoint that went
21 through the evidence that was available?

22 A. I'm thinking he did. I don't recall
23 specifically.

24 Q. The end result of that, were you aware of
25 whether the Third Judicial District Attorney's

1 Office filed any charges against anyone?

2 A. They did not, no.

3 Q. And how about the United States Attorney's
4 Office?

5 A. Eventually, yes.

6 Q. Do you know in your investigation whether
7 you or the people working with you went and
8 interviewed Leroy Lucero?

9 A. I don't know.

10 Q. Some of the documents I showed you
11 indicated that Mr. Lucero had gotten orders from
12 Angel Munoz. Did you see that?

13 A. Yes, I did.

14 Q. Did anyone interview Mr. Angel Munoz?

15 A. I don't know.

16 Q. Does that name sound familiar as an
17 important person in the SNM Gang?

18 A. I vaguely remember that name coming up
19 during the investigation.

20 Q. Did you conduct any investigation into --
21 well, let me back up. At the Department of
22 Corrections they record inmates' phone calls; right?

23 A. Yes.

24 Q. If you had a particular suspect -- well,
25 strike that. Do you recall whether anyone went back

1 and listened to Mr. Lucero's phone calls to see
2 whether anything suspicious occurred in the content
3 of those calls?

4 A. At the time, it was my understanding that
5 was going to be one function of the correctional
6 personnel, is to go back and review phone calls.

7 Q. Did they give you copies of lots of phone
8 calls?

9 A. I don't think I got any type of log or
10 anything.

11 Q. Did you get any type of mail from
12 Mr. Lucero that had been collected? Well, let me
13 ask you this. Does Department of Corrections
14 collect mail of inmates and review it and copy it if
15 it has any suspicious material in it?

16 A. I believe they do, yes.

17 Q. Do you know whether anyone looked at
18 Mr. Lucero's mail to see if it had anything
19 suspicious?

20 A. No, I don't.

21 Q. Or Mr. Lujan's, for that matter?

22 A. No.

23 Q. And I take it that's same thing with
24 Mr. Lujan's phone calls?

25 A. Yes.

1 Q. Now, one of the reasons you listen to
2 phone calls is that shortly before a murder, if an
3 inmate is calling and says, "Look, I'm not going to
4 be able to call for you a long while, Mom," or the
5 wife, or something like that, it might indicate that
6 they knew the murder was about to occur.

7 A. That, or there's codes, code words that
8 they listen for, as well.

9 Q. Right. But I mean, inmates want to let
10 their loved ones know if they're going to be locked
11 down for a long period of time. Would that be fair
12 to say?

13 A. I don't know.

14 Q. Well, the facility was locked down for a
15 considerable length of time after these two murders;
16 is that right?

17 A. Yes.

18 Q. And the inmates were not allowed to make
19 any calls out; is that right?

20 A. I don't know that.

21 Q. Now, we've heard about early tips or
22 information concerning Billy Garcia and Leroy
23 Lucero; is that right?

24 A. Yes.

25 Q. Would it be right, there were no early

1 tips pointing the finger toward Leonard Lujan?

2 A. That would be correct.

3 Q. You didn't conduct an interview of Leonard
4 Lujan, did you?

5 A. I did in 2007.

6 Q. I'm sorry. Not in 2001?

7 A. No.

8 Q. When you talked to Mr. Lujan in 2007, I'm
9 not going to get into all the details, but did he
10 indicate that there -- did he describe a meeting he
11 had with Billy Garcia in which he said that the
12 Department of Corrections had it on video and had
13 taken photographs of that meeting? Did he say that
14 to you?

15 MR. CASTELLANO: Objection, calls for
16 hearsay.

17 MR. CASTLE: I'm not offering it for the
18 truth, Your Honor. I'm offering it to see if he
19 went out and tried to collect.

20 THE COURT: Well, I think we can just ask
21 those questions without getting into the statements
22 that were made. So I think you can ask him after
23 the conversation did he do anything. But I think
24 we're getting a lot of statements that I'm not sure
25 an instruction is going to help a lot with.

1 BY MR. CASTLE:

2 Q. Either before you talked to Mr. Lujan or
3 after, did you ever locate any video taken that
4 showed Mr. Garcia and Mr. Lujan meeting out in the
5 yard or any other place in the facility?

6 A. No.

7 Q. Or how about still photos?

8 A. No.

9 Q. Did you in your investigation interview an
10 individual by the name -- there was an inmate at the
11 facility at the time by the name of Jason Hoster.

12 A. No.

13 MR. CASTLE: Your Honor, if I could have
14 just a moment.

15 THE COURT: You may.

16 BY MR. CASTLE:

17 Q. Sir, did you ever interview an inmate by
18 the name of Jimmie Gordon?

19 A. No, I did not.

20 Q. Agent, I'm going to show you Exhibits AS,
21 AQ, AR, and AT. Are those some of the documents
22 that I was showing you in my exam?

23 A. Yes.

24 Q. There is information from informants
25 provided to either the Department of Corrections,

1 the FBI, or in this case to you; is that right?

2 A. Yes, it is.

3 Q. And they would memorialize what was said
4 at that time?

5 A. Yes.

6 MR. CASTLE: I'm moving for the admissions
7 of AS, AQ, AR and AT at this time.

8 THE COURT: Any objection, Mr. Castellano?

9 MR. CASTELLANO: May I see the exhibits,
10 Your Honor?

11 THE COURT: You may.

12 MR. CASTELLANO: Your Honor, I would
13 object to hearsay and also object to the fact that
14 there is redacted information here which may also be
15 pertinent, but the primary reason is these are law
16 enforcement reports which are hearsay.

17 THE COURT: I'm not going to admit these,
18 so objection sustained.

19 MR. CASTLE: Thank you, Your Honor. No
20 other questions, Your Honor.

21 THE COURT: Thank you, Mr. Castle. Any
22 other defendant have questions of Mr. Rhoades?

23 MR. SHATTUCK: Yes, sir, briefly.

24 THE COURT: Mr. Shattuck.

25 MR. SHATTUCK: May it please the Court?

1 THE COURT: Mr. Shattuck.

2 CROSS-EXAMINATION

3 BY MR. SHATTUCK:

4 Q. Are you still Agent Rhoades?

5 A. Yes, sir.

6 Q. Agent Rhoades, I'm going to show you --
7 first of all, I'll ask you a question. In
8 conjunction with your overall investigation of the
9 murders, did you request that drug tests be taken
10 from some of the people that lived in those cells?

11 A. No, I did not.

12 Q. You didn't do that?

13 A. No.

14 Q. Okay. Did you review any drug tests after
15 or during the course of your investigation?

16 A. No.

17 Q. Now, you started this investigation March
18 26?

19 A. Yes.

20 Q. And you didn't write your report until
21 June 22; is that correct?

22 A. I think you're right, yes.

23 Q. Who is Rich Libicer?

24 A. At the time, he was a former investigator
25 with me out of my office.

1 Q. And you guys -- did you review each
2 other's reports and review the evidence? Because I
3 notice that he approved your report. So you're the
4 one who wrote it from everything you had gathered.
5 He reviewed that and then he approved that report?

6 A. Yes. Sometimes the sergeant was
7 out-of-pocket, so he assigned somebody to take his
8 place, which included approving reports.

9 Q. They don't just rubber-stamp those
10 reports, do they?

11 A. No, they shouldn't.

12 Q. Now, you started your investigation; you
13 were aimed in a direction as to what had happened
14 and how things had gone. You continued your
15 investigation, and then you learned from part of
16 that investigation that you needed to go back
17 because there were some things that were wrong.
18 Isn't that correct?

19 A. Yes.

20 Q. And I'm not going to go into what was told
21 to you or anything, but I'm going to show you the
22 first page of what's entitled Department of Public
23 Safety cover sheet. It's Bates stamped 131.

24 MR. SHATTUCK: May I approach, Your Honor?

25 THE COURT: You may.

1 MR. SHATTUCK: I just stumbled up here.

2 THE COURT: That's fine.

3 BY MR. SHATTUCK:

4 Q. Does that appear to be the first page of
5 your report?

6 A. Of supplement number 5.

7 Q. You filed your initial report as well as a
8 bunch of supplements on that June date; is that
9 correct? That's when you published these?

10 A. I don't remember. I'd have to look on the
11 supplement reports when they were submitted or
12 written.

13 Q. At least this report.

14 A. The original, yes.

15 Q. Yes, sir. And that's what this is, the
16 original. It's a supplement, but -- this is a copy,
17 of course. But it's a supplement, but it's what you
18 turned in.

19 A. Yes.

20 Q. Can you tell me the date of the incident
21 of the death of Mr. Castillo on your report? Do you
22 need to see it again?

23 A. I think it was --

24 Q. Here, I'll bring it to you.

25 A. It was the 26th.

1 Q. Let's make sure.

2 A. Oh, March 25, 2001.

3 Q. And the time?

4 A. It notes 2200, which would equate to 10:00
5 p.m.

6 Q. So after all this investigation, when you
7 wrote this report, it was your opinion that the
8 incident took place March 25 at 10:00 p.m.; is that
9 correct?

10 A. I believe so, yes.

11 MR. SHATTUCK: Thank you. I have no
12 further questions.

13 THE COURT: Thank you, Mr. Shattuck.

14 Anyone else? Mr. Burke.

15 CROSS-EXAMINATION

16 BY MR. BURKE:

17 Q. Agent Rhoades, a handful of questions,
18 some of which may be a bit repetitious.
19 Mr. Castillo was strangled with his own laundry bag;
20 true?

21 A. Yes.

22 Q. When you went to get DNA samples, inmate
23 Edward Troup gave you his DNA sample; true?

24 A. Yes, he did.

25 Q. The cord on the laundry bag had Angel

1 DeLeon's DNA on it; correct?

2 A. Yes.

3 Q. As a result of that, you prepared an
4 affidavit for the arrest of Mr. DeLeon?

5 A. Yes, I did.

6 Q. In that affidavit you noted that Dr.
7 Zumwalt concluded, as you just said, that the
8 homicide occurred the evening before March --

9 MR. CASTELLANO: Objection, hearsay.

10 THE COURT: I think you can get what he
11 thought at the time without getting into the
12 statements. Sustained.

13 BY MR. BURKE:

14 Q. As you just testified, you thought at the
15 time March 25, 10:00 p.m. was the date and time of
16 the homicide?

17 A. Around 10:00 p.m., 10:00 to 10:30, yes.

18 Q. And then after you prepared and submitted
19 your affidavit to the district attorney's office,
20 there was no prosecution at that time; is that true?

21 A. Yes, that's correct.

22 Q. Then, years later, you prepared a
23 PowerPoint which summarized the evidence again, this
24 time including the statements of Mr. Lujan; is that
25 true?

1 A. Yes.

2 Q. And that was a rather professional -- it
3 was a 50-page PowerPoint. You did the very best you
4 could to summarize in as thorough a way as possible
5 the evidence that was available at that time. Is
6 that a fair statement, sir?

7 A. That was the intent, yes.

8 Q. And there was no prosecution in 2008; is
9 that true?

10 A. That's true.

11 Q. Or 2009?

12 A. That's correct.

13 Q. Or 2010?

14 A. That's correct to my knowledge, yes.

15 Q. And all the way up until December of 2015.

16 A. That's possible. I don't know the exact
17 date when charges were filed. Probably somewhere
18 around there.

19 MR. BURKE: That's all I have.

20 THE COURT: Thank you, Mr. Burke.

21 Any other defendant have cross-examination
22 of Mr. Rhoades?

23 All right, Mr. Castellano. Do you have
24 redirect of Mr. Rhoades?

25 MR. CASTELLANO: Yes, thank you.

1 THE COURT: Mr. Castellano.

2 REDIRECT EXAMINATION

3 BY MR. CASTELLANO:

4 Q. Agent Rhoades, you testified that you had
5 prepared an arrest warrant and an affidavit in
6 support of that warrant for Angel DeLeon; is that
7 correct?

8 A. Yes.

9 Q. And that's because he's the one person
10 whose DNA matched the crime scene for Mr. Castillo?

11 A. Yes.

12 Q. When you talked to Leonard Lujan in 2007,
13 that was consistent with what he told you, wasn't
14 it?

15 MR. CASTLE: Objection, Your Honor,
16 hearsay.

17 THE COURT: Sustained.

18 BY MR. CASTELLANO:

19 Q. Did that surprise you? In 2007 -- did you
20 have any surprises when you talked to Leonard Lujan
21 in 2007?

22 A. No, not really.

23 Q. Did you eliminate Angel DeLeon as a
24 suspect after speaking with Leonard Lujan in 2007?

25 A. Did I eliminate him?

1 Q. Correct.

2 A. No.

3 Q. When you presented these cases for
4 prosecution, did you have Eugene Martinez as a
5 witness in your case? Eugene Martinez, the same one
6 involved with the Garza murder.

7 MR. GRANBERG: Objection, Your Honor.
8 Leading question.

9 THE COURT: Overruled.

10 BY MR. CASTELLANO:

11 Q. You can answer, sir.

12 A. I'm thinking not. I don't recall having,
13 really, any witnesses other than Mr. Lujan.

14 Q. What about someone named Manuel Jacob
15 Armijo? Did you have him as a witness? Also known
16 as Big Jake?

17 A. No, I don't recall that.

18 Q. Did you have anyone named Javier Alonso as
19 a witness?

20 A. I don't recall that either.

21 Q. What about Leonard Lujan?

22 A. Him, I did.

23 Q. So you had your one witness, then?

24 A. Yes.

25 Q. Did you have Leroy Lucero as a witness

1 back then?

2 A. No.

3 Q. So did you know what he would say about
4 who was running the prison when he arrived and when
5 he left?

6 A. No, I don't have any knowledge about that.

7 Q. And were you aware that he left the prison
8 three days before the murders happened?

9 A. No, I wasn't aware of it.

10 Q. If you checked the logs, were you aware of
11 whether or not Billy Garcia arrived at the prison
12 about 18 days before the murders happened?

13 A. I would if I saw the documentation of
14 that.

15 Q. And were you aware that Billy Garcia was
16 the highest-ranking member in the prison when he
17 arrived?

18 A. Later in the investigation, that's what I
19 understood, yes.

20 MR. CASTLE: That's hearsay, but I'll let
21 it go.

22 THE COURT: Sustained.

23 BY MR. CASTELLANO:

24 Q. Now, what types of informants are there in
25 terms of what they're willing to do in terms of

1 giving information or testifying? What's been your
2 experience?

3 A. Most of the informants I had were
4 confidential, just giving information; they didn't
5 want to get involved, they didn't want to be
6 exposed, but they would give avenues of maybe
7 getting to the point in a different direction,
8 minimizing their part.

9 Some informants were willing to testify
10 for exchange of getting a lighter sentence and
11 charges they had, whatever, something in it for
12 them. Very few, but some, will come forward and
13 give information and be willing to testify to it.

14 Q. And why is that, in your experience?

15 A. A lot of fear, mostly. They don't want to
16 have retaliation or something happen to them or
17 their family members.

18 Q. What about in a prison setting?

19 A. My experience with that -- and I have not
20 developed any informants in the prison -- but a fear
21 factor is a lot, from what I've been told by
22 inmates.

23 MR. GRANBERG: Objection, Your Honor.
24 Hearsay.

25 THE COURT: Sustained. He can give his

1 experience, but he can't relate what they're telling
2 him.

3 BY MR. CASTELLANO:

4 Q. You touched on it a little bit, but what
5 are some of the motivations for people who provide
6 information?

7 A. Some of the motivations is in exchange,
8 something for them back.

9 Q. Are there citizen informants who just do
10 it because they just want to help law enforcement?

11 A. Yes.

12 Q. Are there some who get paid?

13 A. Yes.

14 Q. Are there some who are just trying to
15 point you in the right direction?

16 A. Yes.

17 Q. And when you get that information, what do
18 you have to do with it? Do you believe it right out
19 of the gate, or do you have to evaluate it?

20 A. No, for me, if I get information, I prefer
21 it to be substantiated somehow, either by physical
22 evidence or something to shore it up.

23 MR. CASTELLANO: May I approach the
24 witness, Your Honor?

25 THE COURT: You may.

1 BY MR. CASTELLANO:

2 Q. This is marked 19126 at the bottom. And
3 is this one of the documents you were shown a little
4 bit ago. Or was yours redacted?

5 A. The one I looked at was redacted.

6 Q. Do you see in this report information
7 about Leroy Lucero?

8 A. Yes.

9 Q. Can you tell us whether the information
10 from that informant is inconsistent with the
11 information you had earlier about what Leroy Lucero
12 was doing?

13 MR. CASTLE: I'm going to object, Your
14 Honor. That can only be answered based on hearsay.

15 THE COURT: I agree. Sustained.

16 BY MR. CASTELLANO:

17 Q. Did you ever see this document beforehand
18 when you were investigating?

19 A. No, I don't recall seeing it.

20 Q. So if there are names of other people
21 charged in this case, would that have also assisted
22 you in terms of having leads?

23 A. Probably so, yes.

24 Q. And without saying the names, do you see
25 people's names in this document? Once again,

1 without saying the name, are the names in this
2 document involving defendants in this case?

3 MR. BURKE: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. CASTELLANO:

6 Q. So if you had those names, would that have
7 also furthered your investigation?

8 A. Could have, yes.

9 Q. Would you consider having those names
10 leads? Had that information been provided to you,
11 would those also have been considered leads for you?

12 A. Yes, they would have.

13 Q. And so you said something about
14 Corrections having its own informants. What was it
15 that was different from their system versus any
16 informants you had, that you're aware of?

17 A. Their informants, it's different. Mine is
18 out on the streets. They're free to do what they
19 want in different locations. Theirs are probably
20 more -- obviously more accessible, and a lot more
21 interaction between them.

22 Q. And do you know, from looking at those
23 reports, what their intent was in giving their
24 information or their motive?

25 A. No, I don't.

1 Q. For example, could this be somebody who
2 could be an enemy of somebody they named to law
3 enforcement?

4 A. Yes, it could be.

5 Q. Without looking at the document which
6 wasn't yours, do you know why the information was
7 provided in any of these documents?

8 A. What I recalled reading there was, one did
9 not like the other, things like that.

10 Q. And in 70,000 pages of discovery in this
11 case, do you know how many informants have been
12 listed and/or named?

13 MR. CASTLE: Could he lay some foundation?

14 THE COURT: It's just a yes/no. This is a
15 foundational, so if he doesn't know, he can say he
16 doesn't know.

17 A. And I don't know.

18 BY MR. CASTELLANO:

19 Q. In other words, do you have any idea?

20 A. No.

21 Q. Are you aware that some of the informants
22 in this case have been named and identified?

23 A. Yes.

24 Q. Now, when you have a murder in a pod, such
25 as in this case, do all of the people in the pod

1 immediately become suspects?

2 A. Yes, that's correct.

3 Q. And why would that be?

4 A. They were the ones either in there while
5 the pod was locked down, or they had access to it.

6 MR. SINDEL: Mr. Castellano, would you
7 mind moving that microphone a little closer to your
8 mouth?

9 MR. CASTELLANO: Okay.

10 BY MR. CASTELLANO:

11 Q. So what I want to do, Agent Rhoades -- and
12 I can refresh your memory if you don't have the
13 information right at hand, I'm going to ask you who
14 were the people living in P-1 green pod, which is
15 Frank Castillo's pod.

16 A. To get them all, I'd have to look at the
17 report for a list of them. I know -- I can name
18 some of them. Lawrence Trujillo. I think Robert
19 Romero was there. Edward Troup, Joe Gallegos, Angel
20 DeLeon. I think Chris Pacheco lived in there.
21 Michael Jaramillo.

22 Q. Did you say Ruben Romero?

23 A. There could have been a couple of last
24 name Romeros in there. Ruben was one. Felix.
25 Victor Felix.

1 Q. And we talked about Frank Castillo
2 already. Do you know how many Romero's were in that
3 pod?

4 A. Two, maybe three.

5 Q. Would it help to refresh your recollection
6 to look at the report for the remaining names?

7 A. It would.

8 MR. CASTELLANO: May I approach, Your
9 Honor?

10 THE COURT: You may.

11 BY MR. CASTELLANO:

12 Q. Once you refresh your recollection, I'm
13 also going to ask you about the cell numbers where
14 they were located.

15 A. Okay. Did you want me to read the names?

16 Q. Yes, please. The name and the cell
17 number?

18 A. Frank Castillo, cell number 2204. Angel
19 DeLeon, 2207. Ralph Romero, 1107. Richard Lopez,
20 2206. Lawrence Torres, 1104. Joe Gallegos, 2209.
21 Victor Felix, 22 -- this one I was not sure. From
22 Corrections, I had 2209 twice, so I don't know if
23 that was his cell or not. Eddie Garcia, 1101.
24 Robert Romero, 1102. Edward Troup, 1103. Gabriel
25 Sanchez, 1108. Chris Pacheco, 1109. Michael

1 Armijo, 2203. And Ruben Romero, 2208.

2 Q. How many inmates total including
3 Mr. Castillo?

4 A. There's going to be 14.

5 MR. CASTELLANO: May I retrieve the
6 exhibit, Your Honor?

7 THE COURT: You may.

8 BY MR. CASTELLANO:

9 Q. When you were putting together the
10 timeline about when the homicide may or may not have
11 occurred, I'm going to ask you about a statement you
12 took from Edward Troup. First of all, do you
13 remember taking a statement from Edward Troup on
14 March 26, 2001?

15 MR. BURKE: Objection, Your Honor. Beyond
16 the scope.

17 THE COURT: Overruled.

18 MR. SINDEL: May we have a limiting
19 instruction, Your Honor?

20 THE COURT: Well, I think right now it's
21 just: Did you remember taking a statement? So
22 there is no statement. It's just yes/no.

23 A. Yes.

24 BY MR. CASTELLANO:

25 Q. And did you provide him his Miranda

1 warnings before you took a statement from him?

2 A. Yes.

3 Q. Did he agree to talk to you?

4 A. Yes, he did.

5 Q. What I want to ask you is what he told
6 you, when was the last time he saw Frank Castillo
7 alive?

8 THE COURT: All right. Now, this question
9 you are entitled to a limiting instruction. This
10 can only be used against Mr. Troup. It can't be
11 used against any other defendant in your
12 deliberations. You can only use it in your
13 deliberations as to the charges against Mr. Troup.

14 BY MR. CASTELLANO:

15 Q. If you don't recall, I can refresh your
16 recollection with the report. So first of all, do
17 you recall what he said?

18 A. No, I don't.

19 MR. CASTELLANO: May I approach, Your
20 Honor?

21 THE COURT: You may.

22 A. Okay.

23 BY MR. CASTELLANO:

24 Q. Do you recall what Mr. Troup told you
25 about when was the last time he saw Mr. Castillo?

1 A. Yes, at around 10:30 in the day room the
2 previous night.

3 Q. So 10:30 p.m. the night before?

4 A. Yes.

5 Q. Were you aware when lockdown was for the
6 night?

7 A. It was around 10:30 p.m.

8 Q. You were asked about the requirement to
9 contact OMI. Do you recall that?

10 A. Yes, I do.

11 Q. What was your recollection -- Mr. Sindel
12 was reading something to you. Did that sound
13 familiar, what he was reading to you?

14 A. Yes, it did. I hadn't read that statute
15 in years and years, but it sounded familiar.

16 Q. Did it sound like it was the statute
17 regarding who should be contacted when there is a
18 death?

19 A. Sounded like it, yes.

20 Q. Do you recall who should be contacted? It
21 was an either/or.

22 A. Law enforcement or the OMI.

23 Q. And were you contacted that morning?

24 A. Yes, I was.

25 Q. Now you were asked about whether you were

1 looking at a different gang or the same gang. Do
2 you recall that in terms of who was responsible for
3 the murders?

4 A. Yes. I don't recall the word "gang,"
5 but...

6 Q. And so from your investigation and the
7 leads that you developed, what was your opinion
8 about whether this was done by the same gang as
9 Castillo and Garza or a different gang?

10 A. Oh, gang, yes. By the same gang.

11 Q. When it came to being the case agent and
12 then the crime scene people arriving at the scene,
13 was there a division of labor between you and
14 others?

15 A. Yes, there was.

16 Q. What was the division of labor?

17 A. My function was the investigative side of
18 it, whereas their function was the crime scene,
19 physical evidence side of it.

20 Q. What were your overall responsibilities as
21 the case agent?

22 A. Well, to eventually, when things were
23 completed, get evidence reports and information and
24 pull all that together.

25 Q. Now, in items of committing a crime, would

1 it make more sense to use Mr. Castillo's own laundry
2 bag or someone else's laundry bag?

3 MR. SINDEL: I object, Your Honor.

4 THE COURT: Sustained.

5 BY MR. CASTELLANO:

6 Q. Would that be a good idea, to use your own
7 laundry bag?

8 MR. SINDEL: Objection. The same
9 objection.

10 THE COURT: Sustained.

11 BY MR. CASTELLANO:

12 Q. If someone else's laundry bag had been
13 used, would you have focused your attention on that
14 person?

15 A. It would have put them in the spotlight,
16 yes, as the prime suspect.

17 Q. Earlier you said the name Leroy Lucero was
18 not familiar to you?

19 A. I didn't recollect it at the time I was
20 asked, no.

21 Q. Do you know why that is?

22 A. Yes, I do.

23 Q. Why is that?

24 A. During this investigation, there were so
25 many names coming in, some with seemingly substance

1 to it which may have been documented in a report,
2 such as Leroy Lucero; others just didn't really pan
3 out. But there was so much going on, so many names,
4 it's hard to recollect all of them, even if they are
5 documented in reports.

6 MR. CASTELLANO: May I have a moment, Your
7 Honor?

8 THE COURT: You may.

9 MR. CASTELLANO: Thank you, Your Honor. I
10 pass the witness.

11 THE COURT: Thank you, Mr. Castellano.

12 Mr. Burke.

13 RECROSS-EXAMINATION

14 BY MR. BURKE:

15 Q. Agent Rhoades, I wanted to clarify what my
16 client said you to.

17 MR. BURKE: May I approach the witness?

18 THE COURT: You may.

19 BY MR. BURKE:

20 Q. Bates 68591. Is that your handwriting?

21 A. Yes, it is.

22 Q. And what he said was, "Last night before
23 count," and then there is a dash, "2230." Those are
24 your numbers; right?

25 A. Yes.

1 Q. All right. He didn't say "Last night
2 before count at 2230"?

3 A. No. He probably said 10:30.

4 Q. Yeah. Before count.

5 When Lujan spoke to you and anybody else
6 back then, he didn't mention Edward Troup, did he?

7 MR. CASTELLANO: Objection, calls for
8 hearsay.

9 MR. BURKE: The Government raised Lujan on
10 redirect.

11 THE COURT: Overruled.

12 BY MR. BURKE:

13 Q. He didn't mention Edward Troup, did he?

14 A. No, I don't think he did.

15 Q. All right. And then the prosecutor
16 mentioned the name -- had you testify to the name
17 Lawrence Torres. He didn't give you his DNA, did
18 he?

19 A. No, I don't believe he did.

20 MR. BURKE: Thanks.

21 THE COURT: Thank you, Mr. Burke.

22 Mr. Sindel, did you have questions?

23 MR. SINDEL: Just a few. We've heard that
24 before.

25

25 | A. Yes.

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. Okay. So we have that as part of the
2 responsibility in the statute. The public officials
3 so notified -- that would be law enforcement or the
4 OMI; right? The public official so notified?

5 A. Yes.

6 Q. Shall in turn notify either/or both the
7 appropriate law enforcement authorities or the
8 office of the state or district medical
9 investigator. Now, does that sentence tell you that
10 whichever of those two entities gets the
11 information, they are to contact the other entity?

12 A. Yes.

13 Q. So you're not disputing the fact that
14 someone, whether it was you or Mr. Gonzales or
15 Mr. Duncan or Mr. Supervisor in your department, had
16 an obligation to contact the Office of the Medical
17 Investigator as soon as you knew about it correct?

18 A. I'd have to look at the statute to see if
19 it says "immediately." If so, you're correct.

20 Q. I'll read it to you and if you still need
21 to see it, you are welcome to do it. "Shall report
22 it immediately."

23 A. Then you're correct.

24 Q. I'm not blaming you, because there was a
25 lot of people that were there who had their finger

1 on this case; right?

2 A. Yes.

3 Q. But as far as you know, Mr. Castillo's
4 body was there for a good 12 or more hours before
5 anybody from the medical examiner's office walked
6 in.

7 A. That's correct.

8 Q. And he could have there been as long as
9 somewhere around 10:00 p.m. or so the night before?

10 A. Yes.

11 Q. Okay. Now, there are certain -- how can I
12 say it -- things that you can do with informants,
13 cooperators, people who are jumping on the gravy
14 train; right? Collaborators and co-conspirators.
15 There are a certain amount of things you can offer
16 them for incentive; right?

17 A. Yes, if everything lines out. I couldn't
18 offer them leniency. That would, of course, have to
19 come through prosecutors.

20 Q. So you are limited in what you can offer,
21 and the authorities may be limited to what they can
22 offer.

23 A. Yes.

24 Q. Would it be fair to say that most of the
25 time you are working with state authorities?

1 A. Yes.

2 Q. As far as you know, are the state
3 authorities in a position where they can give
4 somebody a financial reward or pay them money for
5 information?

6 A. Yes.

7 Q. Is it a repeating practice that the
8 prosecuting attorney for Dona Ana pays people just
9 for their information or testimony?

10 A. That -- from their office, I don't know.

11 Q. Would it be unusual for that office to pay
12 money to people for their cooperation?

13 A. I would think so.

14 Q. As far as you know, they named off Eugene
15 Martinez, Manuel Jacob Armijo, Javier Alonso,
16 Leonard Lujan, Leroy Lucero. Were you in a position
17 to offer them money in order to come forward with
18 testimony?

19 A. No.

20 Q. And in those five people I named, were you
21 in a position to say, "Look, if you come forward,
22 we'll cut your sentence"?

23 A. No.

24 Q. Were you in a position to say, "If you
25 come forward, we'll just forgive you murders and

1 assaults and sexual assaults, we'll just forgive
2 them"?

3 A. No, I was not.

4 Q. And were you in a position to offer some
5 of these people complete immunity from their
6 horrible acts?

7 A. No.

8 Q. And were you in a position to tell some of
9 these people, "We can give you a new identity"?

10 A. No.

11 Q. And were you in a position to let these
12 people get a new identity and let them walk among
13 us?

14 A. No.

15 Q. And in terms of the circumstances, you
16 said he asked you, do you try to seek corroboration
17 of the physical evidence to what some of these
18 collaborators or co-conspirators are telling you?

19 A. That's correct.

20 Q. And if they are meeting together in a
21 group, can they then get their story together?

22 A. They should be able to, yes.

23 Q. And if they can see what Big Jake said or
24 they can see what Leroy said or they can see what
25 Leonard said, it's possible that they can also try

1 to tune their stories so they ring the same bell?

2 A. Yes.

3 Q. That's a danger, isn't it?

4 A. Well, it would -- to me, it would minimize
5 the credibility of that statement, yes.

6 Q. And one of the reasons you interviewed
7 every single person separately was to avoid that
8 kind of contamination.

9 A. Yes.

10 Q. To avoid that kind of spillover?

11 A. Yes.

12 Q. Because that means you couldn't trust the
13 final product.

14 A. That's correct.

15 MR. SINDEL: That's all I have.

16 THE COURT: Thank you, Mr. Sindel.

17 Mr. Castle.

18 MR. CASTLE: Thank you, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. CASTLE:

21 Q. There were some questions about whether
22 you had access to three different people, one being
23 Eugene Martinez, one being Manuel Jacob Armijo, and
24 the third being from Leroy Lucero; is that right?

25 A. Yes.

1 Q. With regards to Eugene Martinez, are you
2 sure that he wasn't interviewed, or would you like
3 to look at discovery to take a look?

4 A. I may, because I don't remember, for me,
5 interviewing him.

6 MR. CASTLE: If may I approach the
7 witness?

8 THE COURT: You may.

9 BY MR. CASTLE:

10 Q. Page 738. Would I be correct that
11 Mr. Martinez actually was interviewed?

12 A. Yes, he was.

13 Q. And that was March 26 at 8:35 p.m. in the
14 afternoon; is that right?

15 A. Yes.

16 Q. Do you know whether Manuel Jacob Armijo
17 was even in the prison in March of 2001?

18 A. No, I don't.

19 Q. You didn't interview him, though; right?

20 A. No.

21 Q. So if he had come up on the radar as
22 someone of some importance in the case, you probably
23 would have interviewed him?

24 A. Yes.

25 Q. How many cells were in the pod that you

1 were investigating?

2 A. I don't recall. I know it wasn't full.
3 So I don't know, what, 22 total. I could be wrong,
4 but somewhere around there.

5 Q. Of the people at least in that pod,
6 inmates Chris Pacheco and Lawrence Torres did not
7 give a DNA sample; is that right?

8 A. I believe so, yes.

9 Q. You believe they did, or you believe that
10 they did not?

11 A. Did not.

12 Q. When you presented the case, it sounds
13 like despite finger-pointing at various people as
14 potential suspects, the only one that you tried to
15 get charges on was someone who you had DNA evidence
16 on?

17 A. Yes.

18 Q. So just people telling you it was this
19 person or that person wasn't enough for your
20 investigation?

21 A. No.

22 Q. Now, there were some questions from the
23 Government a few minute ago about the various, I
24 guess, informants that might have been interviewed.
25 Do you recall that?

1 A. Yes.

2 Q. Do you recall on June 11, 2001, an inmate
3 by the name of Toby Romero was interviewed?

4 A. No, I don't recall it.

5 Q. Does that name sound familiar?

6 A. No, I don't recollect it.

7 Q. Let me see if I can -- it's been a long
8 time, so it may be somebody that --

9 I'll show you a document on my computer,
10 if I could. Does this appear to be a report from
11 the FBI dated June 11, 2001, or at least a
12 transcript? Do you see that?

13 A. Yes, I do.

14 Q. It's between Special Agent Pedersen and
15 then somebody who is marked as CW?

16 A. Yes.

17 Q. Were you aware that -- or are you now
18 aware that Mr. Lucero also went by the name of
19 Smurf?

20 A. I am now, yes.

21 Q. This report talks about Smurf, et cetera.
22 Were you even given this transcript by the FBI?

23 A. No, I don't believe I was.

24 Q. Are you aware that Mr. Romero is now dead?

25 A. No, I'm not.

1 Q. But that would have been somebody that at
2 least you would imagine, the United States
3 Attorney's Office, who you were presenting the case
4 to -- when was it did you present that case?

5 A. To the U.S. Attorney's Office?

6 Q. Yes.

7 A. We did a presentation about it in 2007.

8 Q. So they certainly would have had access to
9 the FBI interviews and things of that nature.

10 A. Yes.

11 Q. And Mr. Romero, for that matter, if they
12 had wanted to?

13 A. I would think, yes.

14 Q. And the other informants that were on the
15 documents I showed you that the FBI had interviewed?

16 A. I would think so, yes.

17 MR. CASTLE: I have no further questions.

18 THE COURT: Thank you, Mr. Castle.

19 Mr. Castellano, do you have redirect of
20 Mr. Rhoades?

21 MR. CASTELLANO: No, Your Honor.

22 THE COURT: All right. Thank you

23 Mr. Castellano.

24 All right. Mr. Rhoades, you may step
25 down. You are going to be subject to recall, so

1 you'll need to stay outside of the courtroom, but
2 you're free to leave the courthouse and go about
3 your business until when and if you're needed to
4 come back in.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you for your testimony.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

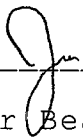
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 1st day of May, 2018.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/18
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com